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WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: March 23, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

Contents

Federal Register

Vol. 64, No. 47

Thursday, March 11, 1999

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register
Vol. 64, No. 47
Thursday, March 11, 1999

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[99–RI–6]

Questions and Answers Regarding the Affordable Housing Program—Part 2

AGENCY: Federal Housing Finance Board.

ACTION: Staff interpretation of affordable housing program regulation.

SUMMARY: The Federal Housing Finance Board (Finance Board) is publishing Questions and Answers Regarding The Affordable Housing Program (AHP or Program) Part 2 (Questions and Answers Part 2). The Questions and Answers Part 2 have been prepared by staff of the Finance Board in response to questions about changes in the Finance Board's regulation governing the AHP (AHP regulation) that went into effect on January 1, 1998, as amended by an interim final rule effective June 19, 1998. The Questions and Answers Part 2 constitute informal staff guidance for Finance Board personnel, the Federal Home Loan Banks (Bank), Bank members, and Program participants. The Answers are intended to be interpretive of the AHP regulation, and are not statements of agency policy. The Questions and Answers Part 2 have not been considered or approved by the Board of Directors of the Finance Board.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, (202) 408–2848, or Janet M. Fronckowiak, Associate Director, (202) 408–2575, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Adviser, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION: On August 4, 1997, the Finance Board published a final rule amending its regulation governing the AHP. *See* 62 FR 41812 (Aug. 4, 1997). The final rule became effective on January 1, 1998. After publication of the final rule, a number of questions of regulatory interpretation were raised by Bank staff. Finance Board staff provided answers to the most frequently asked questions in Questions and Answers published in the **Federal Register** on December 23, 1997. *See* 62 FR 66977 (Dec. 23, 1997). The Finance Board subsequently made certain technical revisions to the AHP regulation to clarify Program requirements and improve operation of the AHP. *See* 63 FR 27668 (May 20, 1998) (interim final rule). Bank staff has raised additional questions regarding interpretation of the AHP regulation, which are addressed in this Questions and Answers Part 2. The Questions and Answers Part 2 constitute informal staff interpretive guidance for Finance Board personnel, the Banks, Bank members, and Program participants. The Answers are intended to be interpretive of the AHP regulation, not statements of agency policy, and they have not been considered or approved by the Board of Directors of the Finance Board.

The Questions and Answers Part 2 are grouped by the provision of the AHP regulation that they discuss, and are presented in the same order as the regulatory provisions. The numbering is consecutive with the numbering in the December 23, 1997 Questions and Answers.

Text of the Questions and Answers Regarding the AHP—Part 2

Questions and Answers Regarding the AHP—Part 2

Definitions (§ 960.1)

Q5. May an AHP-assisted owner-occupied unit be subject to an AHP retention period of longer than five years?

A5. No. Under the AHP regulation, the ''retention period'' for AHP-assisted owner-occupied units is five years from the closing on the sale of the unit to the purchaser. Repayment of a *pro rata* portion of the AHP subsidy is required if the unit is sold to an ineligible purchaser within the five-year period or the owner refinances the unit and removes the retention agreement. Once the five-year period has expired, the owner's obligation to repay any part of the AHP subsidy ends, and a retention agreement may not extend this obligation for a longer period. This does not preclude the unit from being subject to retention agreements for the benefit of other project funders that require longer retention periods for the use of their funds. (See Question 9 in § 960.13 ''Agreements'') (§ 960.1)

Q6. May a Bank use the Mortgage Revenue Bond (MRB) median income standard to determine household income eligibility for projects approved prior to the effective date of the revised AHP regulation (January 1, 1998) but not yet fully funded?

A6. Yes. The MRB income standard may be applied to projects approved before January 1, 1998, that are not fully funded, under both the competitive application and homeownership set-aside programs, provided the MRB median income standard is specified in the Bank's current AHP Implementation Plan and will apply to *all* owner-occupied projects with undisbursed funds. (§§ 960.1, 960.3(b)(1)(i), 960.16)

Q7. In establishing income limits based on the MRB median income standard, may a Bank use the statistics (raw numbers) published by the Internal Revenue Service (IRS) for each state instead of the lists of incomes provided by the states for their MRB programs?

A7. No. If a Bank chooses to use the applicable median family income under the MRB program as the standard for determining the ''median income for the area'' under the AHP, then the Bank must use figures for the applicable median family income for non-targeted areas published by a state agency or instrumentality, not raw figures published by the IRS. (§ 960.1)

Q8. May a Bank use the median income standard allowable under the Native American Housing Assistance and Self-Determination Act (NAHASDA) to determine household eligibility for owner-occupied housing in Indian areas?

A8. Yes. The median income for an Indian area under the NAHASDA is derived from county median income figures published annually by the Department of Housing and Urban Development (HUD). Therefore, the median income for an Indian area under the NAHASDA may be considered a ''median income for the area, as published annually by HUD'' under § 960.1 of the AHP regulation, and no separate Finance Board approval is

necessary. The NAHASDA standard must be identified in the Bank's AHP Implementation Plan as a median income standard used by the Bank. (§§ 960.1, 960.3(b)(1)(i))

Q9. Are there any AHP regulatory requirements regarding what items should be included or excluded in the calculation of a household's income when determining the household's eligibility for rental projects?

A9. The AHP regulation does not address this question. This determination is at the discretion of the Banks, although it is noted that the HUD criteria for inclusions and deductions from income are widely accepted standards in the industry and have been adopted by many government housing programs as well as private sponsors of rental projects. The Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) also both have established criteria for the calculation of a household's income that may be used in qualifying tenants for rental projects. The Bank should specify in its policies and procedures the items that are used or excluded in its calculation of household income eligibility. (§ 960.1)

Operation of Program and Adoption of AHP Implementation Plan (§ 960.3)

Q1. What kind of amendment to the Bank's AHP Implementation Plan requires notice to the Finance Board prior to distributing requests for applications for the next funding period in which the amendments will be effective?

A1. The Bank must notify the Finance Board of any material change in the Bank's policy for its AHP, including: changes to scoring guidelines (including District Priorities); median income standards; time limits on use of AHP subsidies and procedures for verifying compliance with AHP requirements; any additional District eligibility requirements, such as subsidy award limits and in-District location requirements; project feasibility guidelines; AHP funding period schedule; homeownership set-aside program requirements; and monitoring procedures. (§§ 960.3(b)(1), 960.3(b)(4))

Minimum Eligibility Standards for AHP Projects (§ 960.5)

Q6. May AHP funds be used under the competitive AHP application program to pay homeownership counseling costs for projects approved prior to the effective date of the revised AHP regulation (January 1, 1998)?

A6. Yes, AHP funds may be used to pay such homeownership counseling costs under the competitive AHP application program, provided the counseling meets the conditions set forth in the AHP regulation and the project continues to meet all other AHP regulatory requirements, such as the feasibility and need-for-subsidy requirements. If there was another funding source for counseling costs at the time of the AHP application, then the Bank must document that this source will no longer be funding the counseling costs and identify what other costs the source will be paying instead of counseling, if applicable. If there were no counseling costs included in the original sources-and-uses-of-funds statement, the sponsor should submit to the Bank a revised sources-and-uses-of-funds statement that adds the counseling costs as a use, and shows the changes in other uses of funds to enable the funding of the new counseling costs with AHP subsidy. If the payment of counseling fees requires an increase in the amount of the AHP award, then the Bank also should review the revised statement to ensure that there will be no change in the scoring of the AHP application. (§§ 960.5(b)(2), (b)(5))

Q7. May a Bank prohibit the use of AHP direct subsidies for interest rate buydowns?

A7. Yes. This is at the discretion of the Bank. (§§ 960.5(b), 960.3(a)(2))

Q8. May AHP funds be used to pay for fees per household charged by a project sponsor or housing authority to process documents in connection with loan closings?

A8. No. Such fees that pay for administrative costs of the project and its closing are attributable to the sponsor and, therefore, are not an eligible use of AHP subsidy. (§§ 960.5(b), 960.3(a)(2))

Q9. May AHP funds be used to pay for fees charged to households by a lender to process loan documentation?

A9. Yes. Such fees that represent a cost incurred as part of a lender's origination of the mortgage loan are a normal cost of financing and, therefore, are an eligible use of AHP subsidy. (§§ 960.5(b), 960.3(a)(2))

Q10. How may financial feasibility be determined for a shelter?

A10. Where a shelter depends upon charitable contributions rather than rents or other income, a Bank may obtain a history of the sponsor's fundraising that demonstrates its ability to raise funds, as well as the sponsor's commitment to make up any shortfall in the project's annual budget. The Bank may use this information to determine that the project is financially feasible, even if the project would not meet the Bank's feasibility guidelines. (§ 960.5(b)(2))

Procedures for Approval of AHP Applications for Funding (§ 960.6)

Q8. What qualifies as ''donated goods and services'' by a local government in assessing its support for a project under the ''Community Involvement'' scoring criterion?

A8. Examples of items that would qualify as donated goods and services by a local government include: property tax deferment or abatement; zoning changes or variances; infrastructure improvements; and fee waivers (such as waivers of building permit fees). Cash contributions to a project, such as CDBG or HOME funds, provided by a local government do not qualify as donations of ''goods and services.'' Donations of property by a local government would not be considered donations of ''goods and services'' under the ''Community Involvement'' criterion, but would be taken into account under the ''use of donated government-owned or other properties'' scoring criterion. (§ 960.6(b)(4)(iv)(A) and (F)(*10*))

Q9. Does a project's ground lease of 50 years or more provided by a government at a rental fee of $1 per year, qualify as ''land donated or conveyed for a nominal price'' for purposes of the scoring criterion for the ''use of donated government-owned or other properties''?

A9. Yes. The lease of the land may be viewed as property ''conveyed,'' and the $1 annual rental fee for 50 years or more constitutes a ''nominal price'' under the scoring criterion. However, the Bank must determine whether there are any provisions in the ground lease that would affect the abilities of the Bank, member or sponsor to satisfy the requirements of the AHP regulation and the terms of the AHP application. If so, the Bank may need to reject the application or require execution of further assurances from the various parties, in order to ensure compliance with the AHP requirements, as well as provide any additional protections that the Bank deems necessary. (§ 960.6(b)(4)(iv)(A))

Q10. Has the Finance Board defined the term ''first-time homebuyer'' for purposes of the District scoring priority?

A10. There is no regulatory or policy guidance from the Finance Board regarding the definition of ''first-time homebuyer'' for District priority scoring purposes. Thus, the Bank has the discretion to define this term in its AHP Implementation Plan. (§§ 960.6(b)(4)(iv)(F)(*3*), 960.3(b)(1)(vi))

Q11. What ''special needs'' groups are contemplated by the Finance Board in addition to those specifically named in

the District scoring priority provision for ''special needs''?

A11. In authorizing a District scoring priority for households with ''special needs,'' the AHP regulation provides an illustrative list of the types of populations that the Finance Board considers to have special needs that may be addressed through the AHP. The Bank has the discretion to include other groups in this priority that the Bank deems to have special needs similar to the types listed. These groups must be identified in the Bank's AHP Implementation Plan. (§§ 960.6(b)(4)(iv)(F)(*1*), 960.3(b)(1)(vi))

Q12. May an AHP application receive scoring points for ''member financial participation'' if another member, rather than the member applicant itself, is providing qualifying financial assistance to the project?

A12. No. Points may only be awarded under this scoring criterion if the financial assistance is provided directly by the member that is applying for the AHP subsidy. (§ 960.6(b)(4)(iv)(F)(*4*))

Modification of AHP Applications Prior to Project Completion (§ 960.7)

Q2. If a Bank approves the use of unused AHP subsidy to cover a prepayment fee charged by the Bank, can the amount of subsidy be increased to cover the entire fee if the amount of unused AHP subsidy is not sufficient to cover the entire fee?

A2. Yes, provided the project application meets the requirements of the AHP regulation for a modification involving an increase in AHP subsidy. (§ 960.7)

Procedures for Funding (§ 960.8)

Q2. For projects approved prior to January 1, 1998 that committed in their AHP applications to target a specified number of units for households at specific income levels, and where the Bank scored such projects based on a weighted average of the targeting commitment, should subsequent disbursement of the AHP funds be based on compliance with the weighted average targeting of the units, or on a unit-by-unit basis as committed to in the AHP application?

A2. Under the revised AHP regulation, a Bank must determine on a unit-by-unit basis whether the units being funded meet the targeting commitment made in the AHP application. While the weighted average targeting is relevant for scoring purposes, it is not the targeting commitment made in the AHP application and, therefore, cannot serve as the targeting standard for measuring compliance upon disbursement of funds. (§ 960.8(c)(2))

Q3. Are homeownership set-aside programs involving the purchase of owner-occupied units subject to any monitoring or certification requirements other than those set forth in § 960.8(b)(2)?

A3. No. (§ 960.8(b)(2))

Modification of AHP Applications After Project Completion (§ 960.9)

Q3. If there is a change in a project's scoring characteristics (such as failure to provide a service) that does not affect its financial characteristics, can that project be modified after completion?

A3. No. A project must be in financial distress, or at substantial risk of falling into financial distress, in order to qualify for a modification after completion. If not, it is deemed to be in noncompliance with its AHP commitments and recapture of AHP subsidy is required. The sponsor or owner has the option to attempt to cure the noncompliance within a reasonable period of time before recapture is required, or the parties may attempt to reach a settlement of the noncompliance issue if the Bank can show that such a settlement is reasonably justified. (§§ 960.9(a), (b), 960.12(b)(1), (c)(2))

Q4. Can a sponsor convert a completed single-family rental project to an owner-occupied project under the modification provisions of the AHP regulation?

A4. Yes, provided the project meets the financial distress, best efforts, minimum eligibility and scoring requirements of the AHP regulation. The units sold after conversion would be subject to the AHP income-eligibility, retention and monitoring requirements applicable to owner-occupied projects. (§ 960.9)

Initial Monitoring Requirements (§ 960.10)

Q3. Who from a member institution is eligible to execute the certifications to the Bank required under §§ 960.10(b)(1) and (b)(2)?

A3. The certifications may be executed by any individual (such as an assistant vice president, loan officer or community reinvestment officer) at the member institution, who is authorized by the member's board of directors or delegation to do business with the Bank. (§§ 960.10(b)(1), (2))

Q4. Do any of the monitoring requirements contained in § 960.10 apply to homeownership set-aside programs involving the purchase of owner-occupied units?

A4. No. Homeownership set-aside programs involving the purchase of owner-occupied units are subject only to the certification requirements contained in § 960.8(b)(2) of the AHP regulation. (§§ 960.8(b)(2), 960.10)

Q5. May a Bank use a sampling method authorized for the competitive AHP application program under § 960.10(c)(1) in monitoring the certifications received under homeownership set-aside programs involving the purchase of owner-occupied units?

A5. No. As discussed in A4 above, homeownership set-aside programs involving the purchase of owner-occupied units are not subject to the monitoring requirements of § 960.10, which are applicable to the competitive AHP application program. Moreover, the sampling language in § 960.10(c)(1), by its terms, applies only to the back-up documentation supporting the certifications, not to the certifications themselves. In addition, under § 960.8(b)(2) governing homeownership set-aside programs, a Bank must review each certification in order to determine whether the household satisfies the eligibility requirements, prior to disbursing funds to a member for the closing on the sale of a unit to a household. (§§ 960.10(c)(1), 960.8(b)(2))

Q6. May a Bank use a sampling method authorized for owner-occupied projects under § 960.10(c)(1) for the initial monitoring by the Bank of rental projects?

A6. No. A Bank must perform the required initial monitoring for rental projects on all such projects. Sampling during the initial monitoring period may only be used for the monitoring of owner-occupied projects. (§ 960.10(c)(1), (2))

Q7. What is the definition of ''project owner'' under this section?

A7. A project owner must have an ownership interest in the rental project. However, the project owner may designate an agent to perform the owner's responsibilities prescribed by this section. (§ 960.10)

Q8. Is a Bank required to review third-party income verifications at initial monitoring of approved AHP owner-occupied projects?

A8. Yes, a Bank is required to review third-party income verifications, such as tax returns, W–2 forms or other similar documentation, for a sample of units and projects as part of the Bank's initial monitoring of owner-occupied projects. The Bank is not required to review these kinds of documents during its initial monitoring of rental projects, but must do so as part of its long-term monitoring of rental projects. (§§ 960.10(c)(1)(i), (c)(2), 960.11(a)(3)(iii)(B), (C))

Q9. What is the certification requirement for members when construction of all AHP-assisted owner-occupied units is not completed within one year after full disbursement of the AHP funds?

A9. A member may certify to the Bank that the AHP subsidies have been used appropriately and the required retention mechanism is in place, either one year after disbursement of all AHP subsidies or within a reasonable time from the date all units in the project are completed, whichever is later. (§ 960.10(b)(1)(ii), (c)(1))

Q10. At the time of the initial monitoring of an owner-occupied project, what kind of financial review is required to comply with the AHP regulatory requirements that the project's actual costs be in accordance with the Bank's feasibility guidelines, and that the subsidies are necessary for the project's financial feasibility?

A10. Financial reviews should contain the following steps: (1) validation of actual costs and cost comparison between cost estimates in the AHP application and the actual costs; (2) comparison of sources and uses of funds in the application and the final sources-and-uses-of-funds statement to determine that the AHP subsidy is still required; and (3) comparison of the sources-and-uses-of-funds statement with the Bank's established benchmarks for feasibility to determine the reasonableness of costs and the need for AHP subsidy. (§ 960.10(c)(1)(ii))

Q11. During the period of construction or rehabilitation of an owner-occupied project, the project sponsor must report to the member semi-annually on whether reasonable progress is being made towards completion of the project. Is this semiannual report required for projects that have not yet received any AHP subsidy?

A11. Yes. Even when no AHP subsidy has been disbursed, the semi-annual report is required to assist the Bank in ensuring that projects that will not be able to draw down and use funds within the period of time established by the Bank are cancelled in accordance with § 960.8(c)(1). (§§ 960.10(a)(1)(i), 960.8(c)(1))

Q12. How may a Bank verify income eligibility for occupants of a shelter?

A12. Because income verification documentation is not readily available for shelter occupants, a Bank may review income information from intake forms collected by the shelter. (§ 960.10(a)(2)(ii), (b)(2)(ii), (c)(2))

Q13. Is a certification from the homebuyer acceptable documentation to show satisfaction of a ''first-time homebuyer'' requirement adopted by a Bank as a District priority scoring criterion, or is other documentation required?

A13. The AHP regulation does not establish specific requirements for documentation that must be provided by homebuyers to the Bank to demonstrate satisfaction of the ''first-time homebuyer'' requirement. The particular documentation required will depend on the definition of ''first-time homebuyer'' adopted by the Bank. The Bank has the discretion to determine what is appropriate documentation, including self-certification by the homebuyer if such certification provides adequate verification of satisfaction of its ''first-time homebuyer'' requirement. (§§ 960.10(c)(1)(ii), 960.6(b)(4)(iv)(F)(*3*))

Long-Term Monitoring Requirements (§ 960.11)

Q2. Are rental projects that receive less than $50,000 in AHP subsidies subject to the long-term AHP monitoring requirement that the member institution visually inspect the property every three years?

A2. Yes. For all rental projects receiving $500,000 or less in AHP subsidy, the member must visually inspect the property at least once every three years and certify to the Bank that the project appears to be suitable for occupancy. (§ 960.11(a)(3)(ii))

Q3. Are site monitoring visits of AHP projects required regardless of project size?

A3. For all AHP-assisted projects, the Bank must perform an on-site review of project documentation for a sample of the project's units at least once every two years for those projects that receive more than $500,000 in AHP subsidy. This is not required for projects that receive $500,000 or less in AHP subsidy, regardless of when they were approved. (§ 960.11(a)(3)(iii)(B)(*3*))

Q4. What is the definition of ''project owner'' under this section?

A4. A project owner must have an ownership interest in the rental project. However, the project owner may designate an agent to perform the owner's responsibilities prescribed by this section. (§ 960.11)

Remedial Actions for Noncompliance (§ 960.12)

Q3. Where an AHP subsidy provided to a rental project is secured by a soft second mortgage, if a unit or project goes out of compliance with AHP requirements during the 15-year retention period, must the subsidy be recaptured on a pro rata basis, or must the full amount of subsidy be repaid?

A3. A Bank may forgive repayment of the AHP subsidy on a pro rata basis for the unit or project, as long as: (1) The mortgage requires that the forgiveness is contingent upon the project having been in compliance with the AHP requirements during the period for which repayment is forgiven; and (2) the mortgage requires full repayment of subsidy under the conditions set forth in the AHP regulation regarding the sale or refinancing of the project prior to the end of the retention period. Prior to a Bank requiring repayment of any subsidy, the project should be given the opportunity to cure the noncompliance within a reasonable period of time or eliminate the noncompliance through a modification of the terms of the AHP application. (§ 960.12(a) through (c))

Q4. In the case of foreclosure, may a member's prepayment fee on a subsidized advance be waived under § 960.12(a)(2)(ii) as an amount of AHP subsidy that the member cannot recover from the project sponsor or owner through reasonable collection efforts or, in the alternative, may any prepayment fee resulting from foreclosure be paid from AHP subsidy funds?

A4. No. Although a member is not required to repay any amounts of AHP subsidy that cannot be recovered from the project sponsor or owner through reasonable collection efforts, a prepayment fee is not an ''amount of AHP subsidy'' under the AHP regulation. AHP subsidy may only be used to pay a prepayment fee when the project will continue to comply with the AHP requirements for the duration of the original retention period. This would not be the case in a foreclosure. (§§ 960.12(a)(2)(i), (ii), 960.5(b)(4)(i))

Agreements (§ 960.13)

Q1. Who may act as a Bank's designee for receiving notices of sales or refinancings of AHP-assisted projects occurring prior to the end of the retention period?

A1. A Bank's designee may be any entity that is capable of receiving the notice required by § 960.13 and communicating such notice to the Bank. (§ 960.13(c)(4)(i), (5)(ii), § 960.13(d)(1)(i), (2)(ii))

Q2. Does the recapture provision required to be included in retention agreements for owner-occupied units by § 960.13(c)(4) apply to both sale and refinancing of such units funded by a subsidized advance?

A2. No, it only applies to refinancing of the units. When a subsidized advance is used by a member to make a long-term mortgage loan on the property, the loan incorporates some level of interest rate subsidy that the purchaser/owner

benefits from during the term of the loan. When the owner repays the balance of the loan to the member upon sale of the unit, the owner no longer receives the benefit of the interest rate subsidy. Because no AHP subsidy is retained by the owner upon sale of the unit, no recapture of subsidy from the owner is required. (§ 960.13(c)(4))

Q3. Does the requirement for execution of agreements described in §§ 960.13(a) and (b) apply to projects approved prior to January 1, 1998 and funded subsequently?

A3. Yes. The revised AHP regulation applies to prospective actions taken by parties that are affected by the requirements of the regulation. (§ 960.13(a), (b))

Q4. Do the retention and recapture provisions of this section apply to owner-occupied projects where AHP subsidy is used for minor rehabilitation costs totaling less than $1,000?

A4. Yes. All projects with AHP subsidy are required to comply with § 960.13, regardless of the amount of subsidy. (§ 960.13)

Q5. Is a Bank required to charge a prepayment fee on a prepaid AHP subsidized advance, or does the Bank have the discretion to not charge prepayment fees on such advances?

A5. Under the Finance Board's regulation governing advances (12 CFR 935.8(b)(1)), the Banks are required to establish and charge prepayment fees pursuant to a specified formula, which sufficiently compensates the Bank for providing a prepayment option on an advance, and which acts to make the Bank financially indifferent to the borrower's decision to repay the advance prior to its maturity date. Prepayment fees are not required to be charged for certain short-term advances, advances funded by callable debt, and advances that are appropriately hedged. A Bank may waive the prepayment fee only if the prepayment will not result in an economic loss to the Bank. The AHP regulation permits the Bank to charge a prepayment fee on subsidized AHP advances only to the extent that the Bank suffers an economic loss from the prepayment. Thus, a Bank must charge a prepayment fee on a subsidized AHP advance if there is any economic loss to the Bank, and may not charge a prepayment fee if there is no economic loss. (§ 960.13(c)(2))

Q6. May a member include, in its loan agreement with the borrower, a provision requiring the borrower to pay any prepayment fee that the member must pay on a subsidized advance in the event of foreclosure?

A6. The AHP regulation requires the Bank to charge a member a prepayment fee on a prepaid AHP subsidized advance if the Bank suffers an economic loss from the prepayment, but the regulation does not preclude the member from passing through such prepayment fee to the borrower upon foreclosure. The AHP regulation does not address whether a loan agreement may include such a pass-through provision, which would be subject to any applicable state laws. (§ 960.13(c)(2))

Q7. When determining the pro rata share of a direct subsidy to be repaid upon sale or refinancing of an owner-occupied unit, may the direct subsidy amount be reduced on a monthly basis or must it be reduced on an annual basis?

A7. The direct subsidy amount may be reduced pro rata on a monthly basis. (§ 960.13(d)(1)(ii), (iii))

Q8. Is a subsequent income-eligible buyer of an owner-occupied unit sold to such buyer during the original retention period subject to the retention and recapture provisions for the remainder of such retention period?

A8. Yes. Therefore, if such subsequent buyer were to sell the unit during the retention period, he or she would be required to make a pro rata repayment of the direct subsidy received, unless the unit was sold to a low- or moderate-income household. (§ 960.13(d)(1)(ii))

Q9. May an AHP-assisted owner-occupied property be subject to retention periods required by other funding sources that are longer than the five-year period prescribed for the AHP assistance?

A9. Yes. Section 960.13(d)(1) of the AHP regulation requires an owner-occupied unit financed by an AHP direct subsidy to be subject to a retention agreement under which the AHP subsidy received by the owner of the unit is forgiven on a pro rata basis over the duration of the retention period, i.e., five years. This does not preclude the unit from being subject to retention agreements for the benefit of other project funders that require longer retention periods for the use of their funds. If a single agreement is executed for all funders of the project, then the agreement should separately specify that the owner's obligation to repay AHP subsidy ends after five years. (§§ 960.13(d)(1), 960.1, 960.16)

Q10. May a Bank use model agreements that were prepared by a committee of counsels of the Banks?

A10. Yes. A Bank should nevertheless ensure that its own documents reflect any requirements that are particular to its own AHP as set forth in its current AHP Implementation Plan, as well as any applicable state or local law requirements.

Q11. Do the retention requirements of § 960.13(d)(2) apply to a project sponsor that has no ownership interest in, but rather leases, the land underlying the project?

A11. Yes. If the sponsor will own the building(s) to be constructed on the underlying leased land, the sponsor should be considered to be the owner of the project for purposes of the AHP (i.e., to have an ''ownership interest in the project'') and subject to the retention requirements of § 960.13(d)(2). However, the Bank should carefully review the ground lease to determine whether it contains provisions that would affect the abilities of the Bank, member or sponsor to meet the requirements of the AHP regulation and the AHP application and, if so, the Bank may need to require execution of further assurances from the various parties in order to ensure compliance with the AHP requirements. (§§ 960.13(b)(2)(ii), (d)(2), 960.1)

Application to Existing AHP Projects (§ 960.16)

Q1. Are AHP projects with agreements and retention mechanisms executed prior to January 1, 1998 governed by the terms of those agreements, or do the provisions of the revised AHP regulation supersede those documents?

A1. AHP agreements and retention documents executed prior to January 1, 1998 are amended by operation of law to conform with any new applicable AHP regulatory requirements. To the extent that existing agreements and retention documents do not on their face reflect the requirements of the AHP regulation, they are deemed to incorporate such requirements and to bind the parties accordingly. A Bank does not need to execute new agreements with affected parties, but may do so if desired. The revised AHP regulation applies to prospective actions taken by parties that are affected by the requirements of the regulation, pursuant to such amended agreements and documents. (§§ 960.16, 960.13)

Q2. If a project was approved prior to January 1, 1998 but the AHP retention and recapture agreements were not executed until on or after that date, must the agreements conform with the requirements of the revised AHP regulation?

A2. Yes. All AHP retention and recapture agreements for projects approved prior to January 1, 1998 that are executed on or after January 1, 1998 must conform with the requirements of

the revised AHP regulation. (§§ 960.16, 960.13)

Dated: March 4, 1999.

William W. Ginsberg,

Managing Director.

[FR Doc. 99–5981 Filed 3–10–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–62]

Amendment to Class E Airspace; Columbus, NE

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Columbus, NE.

DATES: The direct final rule published at 64 FR 2827 is effective on 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 19, 1999 (64 FR 2827). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 22, 1999.

Herman J. Lyons, Jr.

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–5924 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–61]

Amendment to Class E Airspace; Fort Dodge, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Fort Dodge, IA.

DATE: The direct final rule published at 64 FR 2825 is effective on 0901 UTC, May 20, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri, 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 19, 1999 (64 FR 2825). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 20, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on February 22, 1999.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 99–5923 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 204

RIN 2105–AC46

Procedures and Evidence Rules for Air Carrier Authority Application; Correction

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Correcting amendment.

SUMMARY: This purpose of this rulemaking is to correct § 204.2 of Title 14 of the Code of Federal Regulations (14 CFR 204.2), which contains definitions of terms used in 14 CFR part 204—Data to Support Fitness Determinations.

EFFECTIVE DATE: March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Carol A. Woods, Air Carrier Fitness Division, X–56, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Background

By Final Rule published in the **Federal Register** on August 27, 1992 (57 FR 38761), the Department updated certain of its aviation regulations, including 14 CFR 204.2, which contains definitions of certain terms used throughout part 204. It did not come to our attention until substantially later that a material part of the amended definition of *Relevant corporations* (§ 204.2(k)) had been omitted.

Specifically, subparagraph (2) of § 204.2(k) omits the words ''and which has significant influence over the applicant or air carrier'', which should appear before the words ''as indicated, for example, by 25 percent representation on the board of directors, * * *'' The omitted phrase had been included in the definition in past editions of the CFR (*see, e.g.,* the CFR revised as of January 1, 1988) and had been included in the Notice of Proposed Rulemaking published on June 17, 1991 (56 FR 27696), and in the Final Rule as issued by the Department on August 20, 1992, and forwarded to the **Federal Register** for publication. By inadvertence, this phrase was omitted when the Final Rule was published in the **Federal Register**.

By this rulemaking, the inadvertent error contained in § 204.2(k)(2) is being corrected. Normally, the **Federal Register** publishes its own corrections for printing errors. However, since so much time elapsed before discovery of the error, the **Federal Register** asked the Department to produce this document. The correction puts into place the rule language as issued by the Department in 1992. Therefore, we did not include any discussion of regulatory process matters.

Need for Correction

As published, 14 CFR 204.2(k) contains an error which may prove to be misleading and is in need of correction.

List of Subjects in 14 CFR part 204

Air carriers, Reporting and recordkeeping requirements.

Correcting Amendment

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is corrected by making the following correcting amendment:

PART 204—DATA TO SUPPORT FITNESS DETERMINATIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 49 U.S.C. Chapters 401, 411, 417.

§ 204.2 [Corrected]

2. In § 204.2, paragraph (k)(2) is revised to read as follows:

* * * * *

(k) * * *

(2) Any company (including a sole proprietorship or partnership) holding between 20 percent and 50 percent of the outstanding voting stock of the applicant or air carrier and which has significant influence over the applicant or air carrier as indicated, for example, by 25 percent representation on the board of directors, participation in policy-making processes, substantial inter-company transactions, or managerial personnel with common responsibilities in both companies.

* * * * *

Dated: March 5, 1999.

Patrick V. Murphy,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 99–5972 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–62–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE041–1019a; FRL–6238–7]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Definitions of VOCs and Exempt Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Delaware State Implementation Plan (SIP). The revisions consist of amendments to the definitions of the terms ''volatile organic compounds'' (VOCs), and ''exempt compounds.'' EPA is approving these revisions because they make Delaware's definitions consistent with the federal definition of VOCs.

DATES: This rule is effective on May 10, 1999 without further notice, unless EPA receives adverse written comment by April 12, 1999. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, or by e-mail at quinto.rose@epamail.epa.gov. While information may be obtained via e-mail, comments must be submitted in writing in accordance with the procedures provided above.

SUPPLEMENTARY INFORMATION:

I. Background

On December 28, 1998, the State of Delaware submitted formal revisions to its SIP. The revisions consist of amending the SIP's definitions of the terms ''VOCs'' and ''exempt compounds'' to be consistent with the federal definition of VOC found at 40 CFR 51.100 (s)(1).

II. Summary of SIP Revision

Delaware REGULATION 1—DEFINITIONS AND ADMINISTRATIVE PRINCIPLES, Section 2—Definitions, * * * VOLATILE ORGANIC COMPOUNDS is amended by adding twenty-four additional organic compounds to the list of compounds exempted from the definition of VOCs because those compounds have been determined to be of negligible photochemical reactivity. Regulation 24—CONTROL OF VOLATILE ORGANIC COMPOUND EMISSIONS, Section 2—Definitions,* * * s. ''Exempt Compounds'' is amended to reference the list of negligibly photochemically reactive compounds found in REGULATION 1. The revisions to these Delaware regulations is approvable because these compounds have been determined by the Environmental Protection Agency to have negligible photochemical reactivity and therefore do not participate in chemical reactions that contribute to the formation of ozone, commonly referred to as smog.

The following are the twenty-four organic compounds that have been added to Delaware's list of compounds exempt from the definition of VOCs in accordance with 40 CFR 51.100(s)(1):

1. Parachlorobenzotrifluoride (PCBTF),
2. Cyclic, branched, or linear completely methylated siloxanes,
3. Acetone,
4. Perchloroethylene (tetrachloroethylene),
5. HCFC–225ca (3, 3-dichloro-1, 1, 1, 2, 2-pentafluoropropane),
6. HCFC–225cb (1, 3-dichloro-1, 1, 2, 2, 3-pentaflouropropane),
7. HFC–43–10mee (1, 1, 1, 2, 3, 4, 4, 5, 5, 5-decafluoropentane),
8. HFC–32 (difluoromethane),
9. HFC–161 (ethylfluoride),
10. HFC–236fa (1, 1, 1, 3, 3, 3-hexafluoropropane),
11. HFC–245ca (1, 1, 2, 2, 3-pentafluoropropane),
12. HFC–245ea (1, 1, 2, 3, 3-pentafluoropropane),
13. HFC–245eb (1, 1, 1, 2, 3-pentafluoropropane),
14. HFC–245fa (1, 1, 1, 3, 3-pentafluoropropane),
15. HFC–236ea (1, 1, 1, 2, 3, 3-hexafluoropropane),
16. HFC–365mfc (1, 1, 1, 3, 3-pentafluorobutane),
17. HCFC–31 (chlorofluoromethane),
18. HCFC–151a (1-chloro-1-fluoroethane),
19. HCFC–123a (1, 2-dichloro-1, 1, 2-trifluoroethane),
20. 1, 1, 1, 2, 2, 3, 3, 4, 4-nonafluoro-4-methoxy-butane ($C_4F_9OCH_3$),
21. 2-(difluoromethoxymethyl)-1, 1, 1, 2, 3, 3, 3-heptafluoropropane ($(CF_3)_2CFCF_2OCH_3$),
22. 1-ethoxy-1, 1, 2, 2, 3, 3, 4, 4, 4-nonafluorobutane ($C_4F_9OC_2H_5$),
23. 2-(ethoxydifluoromethyl)-1, 1, 1, 2, 3, 3, 3-heptafluoropropane ($(CF_3)_2CFCF_2OC_2H_5$), and
24. Methyl acetate.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on May 10, 1999 without further notice unless EPA receives

adverse comment by April 12, 1999. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

III. Final Action

EPA is approving the SIP revisions submitted on December 28, 1998 by the Delaware Department of Natural Resources and Environmental Control to amend REGULATION 1—DEFINITIONS AND ADMINISTRATIVE PRINCIPLES, Section 2-Definitions, * * * VOLATILE ORGANIC COMPOUNDS and REGULATION 24—CONTROL OF VOLATILE ORGANIC COMPOUNDS, Section 2—Definitions,* * * s. ''Exempt compounds.''

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If EPA complies by consulting, E.O. requires EPA to provide OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action approving Delaware's definitions of VOCs and exempted compounds must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Volatile organic compounds.

Dated: February 25, 1999.

Thomas J. Maslany,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart I—Delaware

2. In § 52.420, the entry for Regulation 1, Section 2; and Regulation 24, Section 2 in the ''EPA-Approved Regulations in the Delaware SIP'' table in paragraph (c) is revised to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE DELAWARE SIP

State citation	Title/subject	State effective date	EPA Approval date	Comments
Regulation 1	Definitions and Administrative Principles			
*	*	*	*	*
Section 2	Definitions	10/11/98	3/11/99 64 FR 12087	Some terms not in SIP due to subject matter.
*	*	*	*	*
Regulation 24	Control of Volatile Organic Compound Emissions			
*	*	*	*	*
Section 2	Definitions	10/11/98	3/11/99 64 FR 12087	The revised definition of ''Exempt compounds''.
*	*	*	*	*

[FR Doc. 99–5663 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 058–1058a; FRL–6308–5]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the Iowa State Implementation Plan (SIP) which provides for the attainment and maintenance of the sulfur dioxide (SO_2) National Ambient Air Quality Standard (NAAQS) in Cedar Rapids, Iowa. This revision approves a state Administrative Consent Order (ACO) and Emission Control Plan (ECP) which requires reductions of SO_2 emissions from certain major sources in Cedar Rapids, Iowa. Approval of this SIP revision will make the state ACO and ECP Federally enforceable.

DATES: This direct final rule is effective on May 10, 1999, without further notice, unless the EPA receives adverse comment by April 12, 1999. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be addressed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal(s) are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: This section provides additional information by answering the following questions:

What is a SIP?

What is the NAAQS?

What air quality problems occurred in Cedar Rapids, Iowa?

How was the problem addressed?

What is the control strategy?

Is the SIP revision approvable?

Additional information is contained in the state submittal and in the EPA Technical Support Document for this notice which can be obtained by contacting EPA at the address above.

What Is a SIP?

Each state has a SIP containing rules, control measures, and strategies used to attain and maintain the NAAQS. The SIP is frequently updated by the state in order to maintain a current and effective air pollution control program, and to keep current with ongoing Federal requirements. The EPA must review and approve revisions to the state SIP. The Iowa SIP is published in 40 Code of Federal Regulations (CFR) Part 52, Subpart Q. The state of Iowa has submitted the control measures discussed below for approval in the Iowa SIP. Once measures have been approved into the SIP, the EPA has the authority to directly enforce the approved control measures.

What Is the NAAQS?

The EPA has established ambient air quality standards for a number of pollutants, including SO_2. These standards are set at levels to protect public health and welfare. The standards are published in 40 CFR Part 50. If ambient air monitors measure violations of the standard, states are required to identify the cause of the problem and to take measures which will bring the area back within the level of the NAAQS. The 24-hour NAAQS for SO_2 is .14 ppm, not to be exceeded more than once per year.

What Air Quality Problems Occurred in Cedar Rapids, Iowa?

In 1996 there were three exceedances; thus, two violations of the 24-hour SO_2 NAAQS were recorded at an ambient air monitor in downtown Cedar Rapids, Iowa.

How Was the Problem Addressed?

The Iowa Department of Natural Resources (IDNR) (Air Quality Bureau) and the local air agency (the Linn County Health Department), using air dispersion modeling, identified two sources which contributed to the NAAQS violations. These were the IES Utilities 6th Street Station and the Prairie Creek Station, both electric utility power plants. In addition, the modeling identified the potential for localized exceedances at the Archer-Daniels-Midland (ADM) corn processing plant. Results of the modeling were used to establish emission reductions necessary to prevent actual or modeled violations of the SO_2 NAAQS. The modeling was performed in accordance with EPA requirements. (A detailed discussion of the modeling protocol and results was provided in the state SIP submittal and is available for review upon request.)

What Is the Control Strategy?

The IDNR negotiated enforceable emission limitations and other control measures, means, and techniques, as well as schedules and timetables for compliance, sufficient to ensure that the NAAQS for SO_2 will be achieved and maintained in the future. These control measures were developed in conformance with the requirements of 40 CFR Part 51, Subpart G—Control Strategy.

These enforceable commitments have been incorporated into an ACO with IES Utilities, and into an ECP with ADM. These documents constitute the basis for the state's control strategy. The state has met the requirements of 40 CFR Part 51, Subpart G—Control Strategy.

The critical control strategy conditions for each source are summarized as follows:

The IES Utilities 6th Street Station will operate at a reduced SO_2 emission limit and install continuous emission monitoring (CEM) equipment. Allowable emissions will be reduced by 60 percent. The Prairie Creek Station will operate at a reduced SO_2 emission limit, build a new stack, increase the height of an existing stack in conformance with the EPA's stack height requirements at 40 CFR Part 51.100, and install CEMs. Allowable SO_2 emissions will be reduced by 58 percent on Unit 3 and by 50 percent on Unit 4. The ADM facility will operate with reduced SO_2 emission limits on its boiler stacks and install wet scrubbers on two sources to control fugitive emissions.

All sources have met the compliance schedules in their respective ACO and ECP.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR section 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, as explained above, and in more detail in the technical support document which is part of this notice, the revision meets the substantive SIP requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

Final Action:

The EPA is approving a revision to the Iowa SIP which requires source specific SO_2 emission reductions which will result in attainment and maintenance of the SO_2 NAAQS.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 10, 1999, without further notice unless the Agency receives adverse comments by April 12, 1999.

If the EPA receives such comments, then the EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 10, 1999, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled ''Regulatory Planning and Review.''

B. E.O. 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the U.S. Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 10, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: February 25, 1999.

Diane K. Callier,

Acting Regional Administrator, Region VII.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. In § 52.820, paragraph (d), EPA-approved state source-specific permits, revise heading directly above table to

read EPA-Approved Iowa Source-Specific Permits, and add the entries for IES Utilities and Archer-Daniels-Midland to the end of the table to read as follows:

§ 52.820 Identification of plan.

* * * * *

(d) EPA-approved Iowa source-specific permits.

EPA-APPROVED IOWA SOURCE-SPECIFIC PERMITS

Name of source	Order/permit No.	State effective date	EPA approval date	Comment
* *	*	*	*	* *
IES Utilities, Inc	98–AQ–20	11/20/98	3/11/99 64 FR 12090	SO_2 Control Plan for Cedar Rapids, Iowa.
Archer-Daniels-Midland Corporation.	SO_2 Emission Control Plan	9/14/98	3/11/99 64 FR 12090	ADM Corn Processing SO_2 Control Plan for Cedar Rapids, Iowa.

[FR Doc. 99–5824 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. NHTSA–97–3205, Notice 02]

Passenger Automobile Average Fuel Economy Standards

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final decision.

SUMMARY: This final decision responds to a joint petition filed by Vector Aeromotive Corporation (Vector) and Lamborghini S.p.A. (Lamborghini) requesting that each company be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for model years (MYs) 1998 and 1999 and that lower alternative standards be established. In this document, NHTSA denies Lamborghini's request for MYs 1998 and 1999 and grants Vector's request only for MY 1998. The agency establishes an alternative standard of 12.1 mpg for MY 1998 for Vector.

DATES: Effective Date: This final decision is effective April 12, 1999. This denial applies only to Lamborghini for MYs 1998 and 1999.

Petitions for reconsideration: Petitions for reconsideration must be received no later than April 12, 1999.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket and notice number set forth above and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: The following persons at the National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590.

For non-legal issues: Ms. Henrietta L. Spinner, Office of Planning and Consumer Programs, Safety Performance Standards, NPS–32, NHTSA, 400 Seventh Street, SW., Washington, D.C. 20590. Telephone: (202) 366–4802, facsimile (202) 366–2739.

For legal issues: Otto Matheke, Office of the Chief Counsel, NCC–20, telephone (202) 366–5253, facsimile (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Statutory Background

Pursuant to section 32902(d) of Chapter 329 ''Automobile Fuel Economy'' (49 U.S.C. 32902(d)), NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard at that maximum feasible level. Under the statute, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second model year before the model year for which the exemption is sought (the affected model year) and that will manufacture fewer than 10,000 passenger automobiles in the affected model year. In determining the maximum feasible average fuel economy, the agency is required under 49 U.S.C. 32902(f) to consider:

(1) Technological feasibility

(2) Economic practicability

(3) The effect of other Federal motor vehicle standards on fuel economy, and

(4) The need of the United States to conserve energy.

The statute permits NHTSA to establish alternative average fuel economy standards applicable to exempt low volume manufacturers in one of three ways: (1) a separate standard for each exempted manufacturer; (2) a separate average fuel economy standard applicable to each class of exempted automobiles (classes would be based on design, size, price, or other factors); or (3) a single standard for all exempted manufacturers.

Proposed Decision and Public Comment

This final decision was preceded by a proposal announcing the agency's tentative conclusion that Vector and Lamborghini should be exempted from the generally applicable MYs 1998 and 1999 passenger automobile average fuel economy standard of 27.5 mpg, and that alternative standards of 12.4 mpg for MYs 1998 and 1999 be established for Vector and Lamborghini (63 FR 5774; February 4, 1998). The agency did not receive any comments in response to the proposal.

NHTSA Final Determination

On August 27, 1997, Lamborghini and Vector filed a joint petition seeking an exemption from the generally applicable fuel economy standards for passenger cars for MYs 1998 and 1999 and requested that an alternative fuel economy standard for the two companies be established. At the time this petition was filed, V-Power Corporation controlled Lamborghini and Vector. V-Power was, and remains, the largest shareholder of Vector, owning 57 percent of the stock; with the remaining 43 percent of Vector being publicly held. V-Power also had a controlling interest in Lamborghini owning 50 percent of Lamborghini's stock. As V-Power controlled both companies, any alternative Corporate Average Fuel Economy (CAFE) standard would apply to Lamborghini and Vector together (see 49 U.S.C. 32901(a) (4)), and a single

petition was submitted for a single alternative standard, applicable to the combined fleet of the two manufacturers.

On July 24, 1998, Audi AG (Audi), a wholly owned subsidiary of Volkswagen AG, acquired full ownership of Lamborghini. Together, Audi and Volkswagen have an annual worldwide production of more than 10,000 vehicles. Section 32902(d) of Chapter 329 provides that an alternative standard may only be established for a manufacturer that manufactured (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year two years before the model year for which the application is made. The section further provides that an exemption for a model year applies only if the manufacturer manufactures (whether in the United States or not) fewer than 10,000 passenger automobiles in the model year.

On September 21, 1990, the agency published a notice (55 FR 38822) containing NHTSA's interpretation of the terms manufacture and manufacturer for the purposes of determining eligibility for a low volume exemption under section 32902(d). In considering whether an entity is eligible for a low volume exemption, the agency indicated that it must count all of the cars manufactured by that entity worldwide, and not merely those imported in the United States. Importers who are controlled by larger ''parent'' manufacturers have, by virtue of the relationship with the ''parent,'' access to technological and material resources that provide them with the ability to manufacture more fuel efficient vehicles. The fact that the ''parent'' may choose not to import and market cars in the United States does not have any bearing on the availability of these resources.

When Lamborghini and Vector filed their joint petition seeking an exemption in 1997, the annual worldwide production of both companies combined was fewer than 10,000 vehicles. However, Lamborghini was acquired by Audi, which is in turn owned and controlled by Volkswagen, during Lamborghini's 1998 model year. The combined worldwide production of Volkswagen, Audi, and Lamborghini during Lamborghini's 1998 model year was much greater than 10,000 vehicles. As section 32902(d)(1) prohibits establishing alternative fuel economy standards for manufacturers producing more than 10,000 vehicles during the model year for which the exemption is sought, Lamborghini, by virtue of its coming under the ownership of Audi and Volkswagen, is ineligible for an exemption for the 1998 model year. Similarly, as Lamborghini and its parents, Audi and Volkswagen, will manufacture more than 10,000 vehicles annually in the 1999 model year, the agency is denying Lamborghini's request for an exemption for MY 1999 as well.

The agency notes that Vector, which submitted a joint petition for exemption with Lamborghini, remains under the ownership of V-Power. Vector and its parent company produce fewer than 10,000 vehicles worldwide each year. The company is, therefore, still eligible for an exemption from the generally applicable fuel economy standards. Vector has requested that the agency consider the joint petition filed on behalf of itself and Lamborghini to be a single petition seeking an alternative standard for Vector alone. To assist the agency in considering its decision to set such an alternative standard, Vector provided NHTSA with information regarding its maximum feasible fuel economy for the 1998 model year. NHTSA has determined Vector's maximum feasible fuel economy for that year and establishes an alternative standard of 12.1 mpg for MY 1998, based on Vector's request. When Vector furnishes the agency with additional MY 1999 data and information to support its request for an alternative standard for that year, NHTSA will address its petition in a separate decision. In prior model years, Vector exclusively relied on the Lamborghini engine in its passenger cars. Volkswagen's acquisition of Lamborghini leaves Vector technically uncertain regarding the supplier of engines for its 1999 models. Therefore, at this time, the agency cannot determine Vector's maximum feasible fuel economy for MY 1999.

Regulatory Impact Analyses

NHTSA has analyzed this decision and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and procedures apply. Under Executive Order 12866, the decision would not establish a ''rule,'' which is defined in the Executive Order as ''an agency statement of general applicability and future effect.'' The decision is not generally applicable, since it applies to Automobili Lamborghini S.p.A. and its parent companies and Vector Aeromotive Corporation, as discussed in this notice. Under DOT regulatory policies and procedures, the decision is not a ''significant regulation.'' If the Executive Order and the Departmental policies and procedures were applicable, the agency would have determined that this decision is neither major nor significant. The principal impact of this decision is that the companies seeking an exemption could be required to pay civil penalties if the average fuel economy of the Volkswagen/Audi/Lamborghini's and Vector's fleets are less than the generally applicable standard. In that event, purchasers of those vehicles may have to bear the burden of those civil penalties in the form of higher prices. Since this rule sets an alternative standard at the level determined to be the maximum feasible level for Vector for MY 1998, no fuel would be saved by establishing a higher alternative standard. NHTSA finds in the Section on ''The Need of the United States to Conserve Energy'' that because of the small size of Vector's fleet, the incremental usage of gasoline by Vector's customers would not affect the nation's need to conserve gasoline. There would not be any impacts to the public at large.

The agency has also considered the environmental implications of this decision in accordance with the Environmental Policy Act and determined that it does not significantly affect the human environment. Regardless of the fuel economy of the affected vehicles, they must pass the emissions standards which measure the amount of emissions per mile traveled. Thus, the quality of the air is not affected by the denial of Lamborghini's request and the exemption of Vector's request for alternative standards. Further, since the passenger automobiles at issue will be required to meet applicable passenger car fuel economy standards, the decision does not affect the amount of fuel used.

Since the Regulatory Flexibility Act may apply to both decisions denying an exemption to a manufacturer and exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. While the denial of the exemption imposes a burden on Lamborghini, the company and its parent companies are not small businesses. The prices of 1998 and 1999 Lamborghini automobiles are not likely to be affected by this decision as the Lamborghini vehicles are sold in very small numbers and will be included in the fleet of its parent company. The relatively low fuel economy of the small number of Lamborghini vehicles will be outweighed by the comparatively high fuel economy of the large numbers of Volkswagen and Audi vehicles.

Purchasers will therefore not be affected. This decision does not impose any burdens on Vector. It does relieve the company from being subject to an infeasible standard for MY 1998 and from having to pay civil penalties for noncompliance with that standard. Since the price of 1998 Vector automobiles were not affected by this decision, the purchasers are not affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Fuel economy, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 531 is amended as set forth below:

PART 531—[AMENDED]

1. The authority citation for Part 531 continues to read as follows:

Authority: 49 U.S.C. 32902, Delegation of authority at 49 CFR 1.50.

2. Section 531.5(b) is amended by republishing paragraph (b) introductory text and adding paragraph (b)(13) to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(13) Vector Aeromotive Corporation.

Model year	Average fuel economy standard (miles per gallon)
1998	12.1

* * * * *

Issued on: March 5, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–6052 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990304061–9061–01; I.D. 022599B]

RIN 0648–AL63

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Crustacean Fisheries; 1999 Harvest Guideline

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: 1999 harvest guideline for the Northwestern Hawaiian Islands (NWHI) crustacean fishery.

SUMMARY: NMFS announces a 1999 harvest guideline of 243,100 lobsters (spiny and slipper lobsters combined) for the NWHI crustacean fishery, which opens on July 1, 1999. The harvest guideline applies to the entire NWHI. The intent of this action is to prevent overfishing and achieve the objectives of the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region (FMP).

DATES: Effective July 1, 1999.

ADDRESSES: Copies of background material pertaining to this action may be obtained from Alvin Katekaru, Pacific Islands Area Office (PIAO), Southwest Region, NMFS, 2570 Dole St., Honolulu, HI 96822 or Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru at 808–973–2985 or Kitty Simonds at 808–522–8220.

SUPPLEMENTARY INFORMATION: Under Amendment 9 to the FMP, the Southwest Regional Administrator, NMFS (Regional Administrator), sets the annual harvest guideline for the NWHI crustacean fishery. The guideline is 13 percent of the estimated exploitable lobster population (spiny and slipper lobsters combined). This harvest rate is associated with a 10–percent risk of overfishing. As described in Amendments 7 and 9 to the FMP, the total NWHI population of exploitable lobsters is estimated from commercial logbook lobster catch and effort data. The harvest guideline represents the total allowable mortality of lobsters in the fishery regardless of lobster size or reproductive condition. The Regional Administrator will close the fishery when the harvest guideline is estimated to be reached. The harvest guideline for the 1999 NWHI lobster fishery is 243,100 lobsters, based on an estimated total exploitable population of about 1,870,000 spiny and slipper lobsters (both species combined).

Under Amendment 9 to the FMP, the Regional Administrator is required to announce a harvest guideline for the entire NWHI. However, the Regional Administrator has a reason to believe that, if the 1999 lobster harvest is not limited for certain fishing banks, the local lobster populations may be at risk of overexploitation. The Council and fishing industry also concur with this assessment. The Council established bank-specific harvest guidelines for the 1998 lobster season to prevent the potential risk of overexploiting the lobster population at Necker Island, Gardner Pinnacles, and Maro Reef. Those bank-specific guidelines ended on December 31, 1998. On December 2, 1998, the Council voted to recommend permanent bank-specific harvest guidelines for Necker Island, Gardner Pinnacle, Maro Reef, and all other remaining NWHI lobster grounds combined during the 1999 fishing year and subsequent years. NMFS is working with the Council to develop separate proposed and final rules for those bank-specific guidelines.

The PIAO will monitor landings and issue timely reports of the level of cumulative catch information and of the amount of the harvest guideline remaining. Fishermen are advised to contact the PIAO (see **ADDRESSES**) periodically to stay abreast of any changes and of the progress of the fishery toward attaining the harvest guideline. Under the procedures in 50 CFR 660.50(b)(3), NMFS will announce the date upon which the harvest guideline will be reached and the date when the fishery will be closed.

Classification

This action is authorized by 50 CFR part 660 and is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries (AA), NOAA, finds that, because this document merely announces a harvest guideline resulting from the nondiscretionary application of the objective harvest guideline formula in Amendment 9 to the FMP, no useful purpose would be served by providing prior notice and opportunity for public comment. Accordingly, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive as unnecessary the requirement to provide prior notice and opportunity for public comment.

Because prior notice and opportunity for public comment are not required for

this action by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq*., are inapplicable.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: March 5, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–6048 Filed 3–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222313–8320–02; I.D. 030399B]

Fisheries of the Exclusive Economic Zone Off Alaska; Atka Mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for Atka mackerel in the Central Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully utilize the 1999 interim harvest specification of Atka mackerel in the Central Aleutian District, including the 1999 critical habitat percentage of the interim harvest specification of Atka mackerel established for this District.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 7, 1999, until 1200 hrs, A.l.t., April 15, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 1999 interim TAC for Atka mackerel in the Central Aleutian District is 9,520 metric tons (mt), of which no more than 7,616 mt may be harvested from critical habitat (64 FR 3446, January 22, 1999). See § 679.20(c)(2)(ii)(A) and 679.22(a)(8)(iii)(B). The directed fishery for Atka mackerel in the Central Aleutian District was closed to reserve amounts anticipated to be needed for incidental catch in other fisheries (64 FR 10398, March 4, 1999). The Steller Sea lion critical habitat in the Central Aleutian District was closed to trawl gear to prevent exceeding the percentage of the interim harvest specifications of Atka mackerel allocated to the Central Aleutian District (64 FR 8013, February 18, 1999). Fishing with trawl gear in critical habitat in the Central Aleutian District was opened concurrent with the closure of the Central Aleutian District to directed fishing for Atka mackerel (64 FR 10398, March 4, 1999). NMFS has determined that as of March 2, 1999, approximately 4,000 mt remains in the Central Aleutian Islands directed fishing allowance and 2,192 mt remains in the critical habitat percentage of the interim harvest specifications of Atka mackerel allocated to the Central Aleutian District.

The Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the 1999 directed fishing allowance for Atka mackerel in the Central Aleutian District and the critical habitat percentage of the interim harvest specifications of Atka mackerel established for this District have not been reached. Therefore, NMFS is terminating the previous closure and is reopening directed fishing for Atka mackerel in the Central Aleutian District of the BSAI. All other closures remain in full force and effect. Steller Sea lion critical habitat in the Central Aleutian District of the BSAI is defined at 50 CFR part 226, Table 1, Table 2, and Figure 4.

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to fully utilize the 1999 interim harvest specification of Atka mackerel in the Central Aleutian District and the 1999 critical habitat percentage of the interim harvest specifications of Atka mackerel established for this District. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq*.

Dated: March 5, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–5977 Filed 3–5–99; 4:17 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981222314–8321–02; I.D. 030599C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the Eastern Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the Eastern Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the interim 1999 pollock total allowable catch (TAC) for the Eastern Regulatory Area established by the Interim 1999 Harvest Specifications.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 6, 1999, until superseded by the Final 1999 Harvest Specification for Groundfish, which will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Interim 1999 Harvest Specifications (64 FR 46, January 4, 1999) established the interim 1999 pollock TAC in the Eastern Regulatory Area as 1,395 metric tons (mt), in accordance with § 679.20(c)(2)(i).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the interim TAC of pollock in the Eastern Regulatory Area will soon be reached. The Regional

Administrator is establishing a directed fishing allowance of 1,195 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. NMFS is prohibiting directed fishing for pollock in the Eastern Regulatory Area of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the interim 1999 pollock TAC in the Eastern Regulatory Area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 5, 1999.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–5976 Filed 3–5–99; 4:17 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304062–9062–01; I.D. 121098B]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Final 1999 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1999 harvest specifications for groundfish and associated management measures.

SUMMARY: NMFS announces final 1999 harvest specifications for Gulf of Alaska (GOA) groundfish and associated management measures. This action is necessary to establish harvest limits and associated management measures for groundfish during the 1999 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the GOA.

DATES: The final 1999 harvest specifications and associated management measures are effective at noon on March 8, 1999, through 2400 hrs, Alaska local time (A.l.t.), December 31, 1999.

ADDRESSES: The final Environmental Assessment and Final Regulatory Flexibility Analysis prepared for the 1999 Total Allowable Catch Specifications may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7229.

The Final Stock Assessment and Fishery Evaluation Report (SAFE report), dated November 1998, is available from the North Pacific Fishery Management Council, 605 W. 4th Avenue, Suite 306, Anchorage, AK 99501–2252, or by calling 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Thomas Pearson, 907–481–1780 or tom.pearson@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the groundfish fisheries in the exclusive economic zone of the GOA according to the FMP. The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 600.

NMFS announces for the 1999 fishing year: (1) Specifications of total allowable catch (TAC) amounts for each groundfish species category in the GOA, and reserves; (2) apportionments of reserves; (3) allocations of the sablefish TAC to vessels using hook-and-line and trawl gear; (4) apportionments of pollock TAC among regulatory areas, seasons, and allocations for processing between inshore and offshore components; (5) allocations for processing of Pacific cod TAC between inshore and offshore components; (6) Pacific halibut prohibited species catch (PSC) limits; and (7) fishery and seasonal apportionments of the Pacific halibut PSC limits. A discussion of each of these measures follows.

Regulations implementing the FMP establish the process of determining TACs for groundfish species in the GOA. Pursuant to § 679.20(a)(2), the sum of the TACs for all species must fall within the combined optimum yield (OY) range of 116,000–800,000 metric tons (mt) established for these species at § 679.20(a)(1)(ii).

Council met from October 7 through 12, 1998, and developed recommendations for proposed 1999 TAC specifications for each species category of groundfish on the basis of the best available scientific information. The Council also recommended associated management measures pertaining to the 1999 fishing year.

The Council proposed rolling over all the 1998 final specifications for 1999, pending an update of the preliminary 1998 SAFE report to include new information collected during 1998 and revised stock assessments to be incorporated in the final SAFE report. Pursuant to § 679.20(c)(1)(ii), NMFS published the proposed 1999 harvest specifications for the GOA groundfish fishery in the **Federal Register** on December 30, 1998 (63 FR 71876), and comments were accepted through January 29, 1999. NMFS did not receive any comments on the proposed 1999 GOA specifications. Interim TAC and PSC amounts equal to one-fourth of the proposed amounts were published in the **Federal Register** on January 4, 1999 (64 FR 46). The final 1999 initial groundfish harvest specifications and associated management measures implemented by this action supersede the interim 1999 specifications.

The Council met December 9 through 14, 1998, to review the best available scientific information concerning groundfish stocks, and to consider public testimony regarding 1999 groundfish fisheries. The best available scientific information is contained in the current SAFE report, dated November 1998. The SAFE report includes the most recent information concerning the status of groundfish stocks based on the most recent catch data, survey data, and biomass projections using different modeling approaches or assumptions. The Council's GOA Plan Team prepared the SAFE report and presented it to the Council and the Council's Scientific and Statistical Committee (SSC) and Advisory Panel (AP) at the December 1998 Council meeting. The Plan Team's recommendations for acceptable biological catch (ABC) levels and overfishing levels (OFL) are contained in the SAFE report.

For establishment of the ABCs and TACs, the Council considered information in the SAFE report, recommendations from its SSC and AP, as well as public testimony. The SSC adopted the OFL recommendations from the Plan Team, which were provided in the SAFE report, for all groundfish species categories. The SSC also adopted the ABC recommendations from the Plan Team, which were provided in the SAFE report, for all of the groundfish species categories, except pollock and Pacific cod in the GOA.

The SSC did not adopt the Plan Team's recommendation of ABC for pollock in the GOA. The Plan Team's recommendation was to exclude pollock harvested in the State of Alaska (State) managed pollock fishery in Prince William Sound (PWS) from the ABC specified for the GOA based on the results of a 1997 bottom trawl survey conducted by the State. The SSC did not concur, and remains unconvinced that the PWS fishery exploits a resource that is entirely independent of the assessed GOA population. The SSC recommended that the State's guideline harvest level (GHL) of 2,100 mt in the PWS pollock fishery be deducted from the total GOA ABC of 103,020 mt, reducing the ABC to 100,920 mt, and that the 100,920 mt ABC be apportioned among GOA regulatory areas based on the biomass distribution throughout the GOA.

The SSC also did not adopt the Plan Team's recommendation of ABC for Pacific Cod. In consideration of the influence of a strong 1995 year class on the ABC assessment and the declining trend of spawning biomass, the Plan Team recommended that the 1998 ABC of 77,900 mt be rolled over to 1999. The SSC, while considering the recent biomass decline, believes the 1999 ABC assessment of 90,900 mt represents the best scientific estimate and uses new data from the 1998 fishery. The SSC recommended an ABC stepped up from 1998 as the average value of the two years: 77,900 mt and 90,900 mt, resulting in an ABC of 84,400 mt. The Council adopted the SSC's ABC recommendation for Pacific cod. Because the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed the ABC recommendations for those areas, the Council recommended that the TACs be adjusted downward from the ABCs by amounts equal to the 1999 GHLs established for Pacific cod by the State of Alaska for a State-managed fishery in State waters. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below.

In consideration of the trawl prohibition east of 140° W. long., the Plan Team recommended dividing Eastern GOA ABCs among the West Yakutat (WYK) and Southeast Outside (SEO) Districts for those groundfish that could be disproportionately harvested (relative to estimated biomass) in directed fisheries by trawl gear in the WYK area. The Plan Team recommended separate ABCs for pollock, all flatfish, Pacific ocean perch (POP), other slope rockfish, pelagic shelf rockfish, and sablefish. The Plan Team did not recommend separating the Eastern GOA ABC for those groundfish caught by multiple gear types in directed fisheries and those harvested only as bycatch. The SSC adopted the Plan Team's ABC recommendations in the Eastern GOA, with the exception of pollock.

The Plan Team also recommended a split of the Eastern GOA pollock ABC between the WYK and SEO Districts to prevent a disproportionate harvest of pollock from the WYK District following the 1998 prohibition of the use of any gear other than non-trawl gear east of 140° W. long. (§ 679.7(i)(1)). The SSC did not concur stating that because pollock is a migratory species, its harvest in the WYK District should not harm the overall Eastern GOA population. The SSC recommended a single ABC for pollock in the Eastern GOA. The Council accepted the SSC's recommendation for pollock ABCs in the GOA.

The Council adopted the SSC's ABC recommendations for the Eastern GOA, except for sablefish. The Council recommended a single sablefish ABC for the Eastern GOA to allow for the allocation of the 5 percent Eastern GOA trawl allocation to the WYK District, due to the trawl prohibition east of 140° W. long. The Plan Team, SSC, and Council also recommended combining the ABC for northern rockfish with the ABC for the other rockfish assemblage in the Eastern GOA. Northern rockfish is uncommon in the Eastern GOA, the eastern limit of the species range, and the resultant small ABC is impracticable to manage.

The Council's recommended ABCs, listed in Table 1, reflect harvest amounts that are less than the specified overfishing amounts. The sum of the 1999 ABCs for all groundfish is 532,590 mt, which is lower than the 1998 ABC total of 548,650 mt.

1999 Harvest Specifications

1. Specifications of TAC and Reserves

The Council recommended TACs equal to ABCs for pollock, deep-water flatfish, rex sole, sablefish, shortraker/rougheye rockfish, other slope rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, and Atka mackerel. The Council recommended TACs less than the ABC for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and POP (Table 1).

The TAC for pollock has decreased in the Central and Western GOA from 119,150 mt in 1998 to 92,480 mt in 1999. It has increased from 5,580 mt in 1998 to 8,440 mt in 1999 in the Eastern GOA. The apportionment of TAC in the Central and Western GOA reflects the current biomass distribution. The Council did not adopt the AP's recommendation for a single pollock TAC in the Eastern GOA. The Council's recommendation for the 1999 pollock TAC in the Eastern GOA is 2,110 mt in the WYK District and 6,330 mt in the SEO District. The Council's recommendation is based on consideration of the survey estimates of distribution in the Eastern GOA and the potential for disproportionate harvest in the WYK District.

Pursuant to Section 7 of the Endangered Species Act, NMFS completed a consultation on the effects of the pollock fisheries on listed species, including the Steller sea lion, and designated critical habitat. The biological opinion prepared for the consultation, dated December 3, 1998, and revised December 16, 1998, concluded that the pollock fishery in the GOA jeopardizes the continued existence of Steller sea lions and adversely modifies their habitat. At its December meeting, the Council reviewed the reasonable and prudent alternatives (RPAs) contained in the biological opinion to mitigate the adverse impacts of the GOA pollock fishery on Steller sea lions and made recommendations to NMFS for implementing specific RPAs. The Council's RPA recommendations for the 1999 pollock fishery in the GOA included four seasonal apportionments of pollock TAC, with limited rollovers, in the Western and Central GOA; limitations on the seasonal harvest of pollock in critical habitat; augmentation of the closure areas around rookery and haul-out sites; and the establishment of a 136 mt (300,000 lb) trip limit for pollock in the Western and Central GOA. NMFS incorporated these recommendations and other management measures into an

emergency rule (64 FR 3437, January 22, 1999), effective from January 20, 1999, through July 19, 1999. The final specifications establish four seasonal apportionments of the pollock TAC (Table 3). Under the emergency rule, 30 percent of the annual TAC is apportioned to the A season (January 20 through April 1) with a harvest limitation of 15,857 mt within the Shelikof Strait conservation zone (§ 679.22(b)(3)(iii)); 20 percent to the B season (June 1 through July 1); 25 percent to the C season (September 1 until closed in a particular statistical area or October 1, whichever date is earlier); and 25 percent to the D season (which starts 5 days after the C season closure in a particular statistical area through November 1 (§ 679.23(d)(3)(i) through (iv)). The harvest limitation of 15,857 mt in the Shelikof Strait conservation area during the A season is derived from the most recent estimate of pollock biomass in the critical habitat of the Shelikof Strait (489,900 mt) divided by the most recent pollock biomass estimated for the entire GOA (933,000 mt) multiplied by the first seasonal apportionment of pollock TAC, 30 percent of the annual TACs in the GOA (30,280 mt)(§ 679.22(b)(2)(iii)(C)).

The 1999 Pacific cod TAC is affected by the State's developing fishery for Pacific cod in state waters in the Central and Western GOA, as well as PWS. The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals should not exceed the ABC. The Council recommended that (1) the TAC for the Eastern GOA be lower than the ABC by 320 mt, the amount of the State's proposed GHL for PWS, and (2) the TACs for the Central and Western GOA be lower than the ABCs by 10,235 mt and 5,910 mt respectively, the amounts of the State's proposed GHLs for these areas. These amounts reflect the increased percentages the State has established for GHLs in these areas. In the Western GOA, the State Pacific cod GHL has increased from 15 percent in 1998, to 20 percent in 1999. The Pacific cod GHL in the Central GOA has increased from 15 percent in 1998 to 19.25 percent in 1999. The State's Pacific cod GHL of 320 mt for PWS is based on 25 percent of the Eastern GOA ABC, and is unchanged from 1998.

The Council accepted the AP recommendation for the TACs of all species, except pollock and POP. For pollock, the Council requested that NMFS establish separate pollock TACs for the WYK and SEO Districts of the Eastern GOA as proposed by the Plan Team in its ABC recommendations to prevent disproportionate harvest (relative to biomass estimates) of pollock from the WYK District. For POP, the Council recommended a TAC of 820 mt of POP in the WYK District, less than the 1,350 mt TAC recommended by the AP. The Council's recommendation is based upon the most recent estimate of biomass in the area and concerns that POP has only recently been estimated to have met rebuilding goals.

The FMP specifies 5-percent of the combined TAC amount for target species as the formula for specifying the amount for the ''other species'' category. The GOA-wide ''other species'' TAC is 14,600 mt, which is 5 percent of the sum of the combined TAC amounts for the target species. The sum of the TACs for all GOA groundfish is 306,535 mt, which is within the OY range specified by the FMP. The sum of the TACs is lower than the 1998 TAC sum of 327,046 mt. On February 6, 1998, NMFS approved Amendment 39 to the FMP, which established a new species category for forage fish species. Amendment 39 removed capelin, eulachon, and smelt from the ''other species'' category in the FMP and moved these species to the new forage fish species category. While this action changed the list of species in the ''other species'' category, it did not affect the formula for specifying a TAC for the ''other species'' category, which remains 5 percent of the combined TAC amounts for target species. Under Amendment 39, ABC and TAC amounts are not specified for forage fish species.

NMFS has reviewed the Council's recommended TAC specifications and apportionments and hereby approves these specifications under § 679.20(c)(3)(ii). The 1999 ABCs, TACs, and overfishing levels are shown in Table 1.

TABLE 1.—1999 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA

[Values are in metric tons]

Species	Area [1]	ABC	TAC	Initial TAC	Overfishing
Pollock [2]					
Shumagin	(610)	23,120	23,120}		
Chirikof	(620)	38,840	38,840}		
Kodiak	(630)	30,520	30,520}		
Subtotal	W/C	92,480	92,480		134,100
WYK	(640)		2,110}		
SEO	(650)		6,330}		
Subtotal	E	8,440	8,440		12,300
Total		100,920	100,920		146,400
Pacific cod [3]					
	W	29,540	23,630	18,904	
	C	53,170	42,935	34,348	
	E	1,690	1,270	1,016	
Total		84,400	67,835	54,268	134,000
Flatfish [4] (deep water)	W	240	240		
	C	2,740	2,740		
	WYK	1,720	1,720		
	SEO	1,350	1,350		
Total		6,050	6,050		8,070
Rex sole [4]	W	1,190	1,190		

TABLE 1.—1999 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are in metric tons]

Species	Area [1]	ABC	TAC	Initial TAC	Overfishing
	C	5,490	5,490		
	WYK	850	850		
	SEO	1,620	1,620		
Total		9,150	9,150		11,920
Flathead sole	W	8,440	2,000		
	C	15,630	5,000		
	WYK	1,270	1,270		
	SEO	770	770		
Total		26,110	9,040		34,010
Flatfish [5] (shallow water)	W	22,570	4,500		
	C	19,260	12,950		
	WYK	250	250		
	SEO	1,070	1,070		
Total		43,150	18,770		59,540
Arrowtooth flounder	W	34,400	5,000		
	C	155,930	25,000		
	WYK	13,260	2,500		
	SEO	13,520	2,500		
Total		217,110	35,000		308,880
Sablefish [6]	W	1,820	1,820		
	C	5,590	5,590		
	WYK		2,090}		
	SEO		3,200}		
Subtotal	E	5,290	5,290		
Total		12,700	12,700		19,720
Pacific ocean perch [7]	W	1,850	1,850		2,610
	C	6,760	6,760		9,520
	WYK	820	820		
	SEO	3,690	3,160		
Subtotal	E				6,360
Total		13,120	12,590		18,490
Short raker/rougheye [8]	W	160	160		
	C	970	970		
		460	460		
Total		1,590	1,590		2,740
Other rockfish [9, 10]	W	20	20		
	C	650	650		
	WYK	470	470		
	SEO	4,130	4,130		
Total		5,270	5,270		7,560
Northern rockfish [0, 12]	W	840	840		
	C	4,150	4,150		
	E	N/A	N/A		
Total		4,990	4,990		9,420
Pelagic shelf rockfish [13]	W	530	530		
	C	3,370	3,370		
	WYK	740	740		
	SEO	240	240		
Total		4,880	4,880		8,190
Thornyhead rockfish	W	260	260		
	C	700	700		
	E	1,030	1,030		
Total		1,990	1,990		2,800
Demersal shelf rockfish [11]	SEO	560	560		950
Atka mackerel	GW	600	600		6,200

TABLE 1.—1999 ABCS, TACS, INITIAL TACS (PACIFIC COD ONLY) AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA—Continued

[Values are in metric tons]

Species	Area [1]	ABC	TAC	Initial TAC	Overfishing
Other [14] species	GW	N/A [15]	14,600		
Total [16]		532,590	306,535		778,890

[1] Regulatory areas and districts are defined at § 679.2.
[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into four seasonal allowances. In the Eastern Regulatory Area, pollock is not divided into seasonal allowances.
[3] Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Component allocations are shown in Table 4.
[4] ''Deep water flatfish'' means Dover sole, Greenland turbot, and deepsea sole.
[5] ''Shallow water flatfish'' means flatfish not including ''deep water flatfish,'' flathead sole, rex sole, or arrowtooth flounder.
[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).
[7] ''Pacific ocean perch'' means *Sebastes alutus.*
[8] ''Shortraker/rougheye rockfish'' means *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).
[9] ''Other rockfish'' in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category ''other rockfish'' in the Southeast Outside District means Slope rockfish.
[10] ''Slope rockfish'' means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, ''slope rockfish'' also includes northern rockfish, *S. polyspinous.*
[11] ''Demersal shelf rockfish'' means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[12] ''Northern rockfish'' means *Sebastes polyspinis.*
[13] ''Pelagic shelf rockfish'' means *Sebastes ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).
[14] ''Other species'' means sculpins, sharks, skates, squid, and octopus. The TAC for ''other species'' equals 5 percent of the TACs of target species.
[15] N/A means not applicable.
[16] The total ABC is the sum of the ABCs for target species.

2. Apportionments of Reserves

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category be set aside in reserves for possible apportionment at a later date (§ 679.20(b)(2)). For the preceding 11 years, including 1998, NMFS reapportioned all of the reserves in the final harvest specifications, except for Pacific cod. Beginning in 1997, NMFS retained the Pacific cod reserve. NMFS proposed reapportionment of all reserves for 1999, except for Pacific cod, in the proposed GOA groundfish specifications published in the **Federal Register** on December 30, 1998 (63 FR 71876). NMFS received no public comments on the proposed reapportionments. For 1999, NMFS has reapportioned all of the reserve for pollock, flatfish, and ''other species.'' NMFS is retaining the Pacific cod reserve at this time to provide for a management buffer to account for excessive fishing effort and/or incomplete or late catch reporting. In recent years, unpredictable increases in fishing effort and harvests, uncertainty of incidental catch needs in other directed fisheries throughout the year, and untimely submission and revision of weekly processing reports have resulted in early and late closures of the Pacific cod fishery. NMFS believes that retention of the Pacific cod reserve to provide for TAC management difficulties later in the year is a conservative approach that will lead to a more orderly fishery and provide greater assurance that incidental catch of Pacific cod may be retained throughout the year. Specifications of TAC shown in Table 1 reflect apportionment of reserve amounts for pollock, flatfish species, and ''other species.'' Table 1 also lists the initial TACs for Pacific cod which reflect the withholding of the Pacific cod TAC reserve.

3. Allocations of the Sablefish TACs to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4) (i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear and 20 percent of each TAC is allocated to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used to support incidental catch of sablefish in directed fisheries for other target species. In recognition of the trawl ban in the SEO District of the Eastern Regulatory Area, the Council recommended that 90 percent of the WYK District sablefish TAC and 100 percent of the SEO District sablefish TAC be allocated to vessels using hook-and-line gear. This recommendation results in an allocation of 209 mt to trawl gear and 1,881 mt to hook-and-line gear in WYK District. However, the resultant 10-percent allocation of WYK District sablefish TAC to trawl gear (209 mt) does not equal 5 percent of the combined Eastern GOA TACs (265 mt) as required at § 679.20(a)(4)(i). Therefore, NMFS is adjusting the allocation of sablefish TAC in the WYK District by allocating 1,825 mt of the sablefish TAC to hook-and-line gear and 265 mt of the sablefish TAC to trawl gear. Table 2 shows the allocations of the 1999 sablefish TACs between hook-and-line and trawl gear.

TABLE 2.—1999 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are in metric tons]

Area/district	TAC	Hook-and-line apportionment	Trawl apportionment
Western	1,820	1,456	364
Central	5,590	4,472	1,118
West Yakutat	2,090	1,825	265
Southeast Outside	3,200	3,200	0
Total	12,700	10,953	1,747

4. Apportionments of Pollock TAC Among Regulatory Areas and Seasons, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by area and season, and is further allocated for processing by inshore and offshore components. Regulations at § 679.20(a)(5)(ii)(A) require that the TAC for pollock in the combined Western and Central GOA be apportioned in proportion to the distribution of pollock biomass as determined by the most recent NMFS surveys among the Shumagin (610), Chirikof (620), and Kodiak (630) statistical areas. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. As required by the emergency rule effective January 20, 1999 (64 FR 3437, January 22, 1999) each statistical area apportionment is further apportioned into four seasonal allowances of 30, 20, 25, and 25 percent, respectively (§ 679.20(a)(5)(ii)(C)). As required by § 679.23(d)(3), the A, B, C, and D season allowances are available on January 20, June 1, September 1, and 5 days following the C season closure, respectively. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Administrator, Alaska Region, NMFS (Regional Administrator), provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment (§ 679.20(a)(5)(ii)(C)). The WYK and SEO District pollock TACs of 2,110 mt and 6,330 mt, respectively, are not allocated seasonally.

Regulations at § 679.20(a)(6)(ii) require that 100-percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof be allocated to vessels catching pollock for processing by the inshore component after subtraction of amounts that the Regional Administrator projects will be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as bycatch during directed fishing for groundfish species other than pollock, up to the maximum retainable bycatch amounts allowed under regulations at § 679.20 (e) and (f). At this time, these bycatch amounts are unknown and will be determined during the fishing year. The distribution of pollock within the combined Western and Central Regulatory Areas is shown in Table 3, except that amounts of pollock for processing by the inshore and offshore component are not shown. The emergency rule (64 FR 3437, January 22, 1999) implementing the RPAs for the pollock fishery is effective until July 19, 1999. NMFS intends to extend this emergency rule beyond for an additional 180 days. However, the Council may make additional recommendations for the B and C seasons, which adhere to the biological principals of the RPAs and would require amending these specifications.

TABLE 3.—DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND SEASONAL ALLOWANCES. ABC FOR THE W/C GOA IS 92,480 METRIC TONS (MT). BIOMASS DISTRIBUTION IS BASED ON 1996 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN

[Values are in mt]

Statistical area	Biomass percent	1999 ABC=TAC	Seasonal allowances			
			A	B	C	D
Shumagin (610)	25	23,120	6,936	4,624	5,780	5,780
Chirikof (620)	42	38,840	11,652	7,768	9,710	9,710
Kodiak (630)	33	30,520	9,156	6,104	7,630	7,630
Total	100	92,480	27,744	18,496	23,120	23,120

*Harvests of pollock in Shelikof Strait conservation zone, defined at § 679.22(b)(3)(iii)(C) are limited to 15,857 mt during the A season.

5. Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Regulations at § 679.20(a)(6)(iii) require that the TAC apportionment of Pacific cod in all regulatory areas be allocated to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These allocations of the Pacific cod initial TAC for 1999 are shown in Table 4. The Pacific cod reserves are not included in the table.

TABLE 4.—1999 ALLOCATION (METRIC TONS) OF PACIFIC COD INITIAL TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

Regulatory area	Initial TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	18,904	17,014	1,890
Central	34,348	30,913	3,435
Eastern	1,016	914	102
Total	54,268	48,841	5,427

6. Pacific Halibut PSC Mortality Limits

Under § 679.21(d), annual Pacific halibut PSC limits are established and apportioned to trawl and hook-and-line gear and may be established for pot gear.

As in 1998, the Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 1999. The Council recommended these exemptions because of the low halibut bycatch mortality experienced in the pot gear fisheries (13 mt in 1998) and because of the 1995 implementation of the sablefish and halibut Individual Fishing Quota program, which allows legal-sized halibut to be retained in the sablefish fishery. Halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. However, halibut mortality is assumed to be very low given the small amount of fish harvested by this gear type (279 mt in 1998) and the assumed high survival rate of any halibut that are incidentally taken and discarded.

As in 1998, the Council recommended a hook-and-line halibut PSC mortality limit of 300 mt. Ten mt of this limit are apportioned to the demersal shelf rockfish fishery in the Southeast Outside District. The remainder is seasonally apportioned among the non-sablefish hook-and-line fisheries as shown in Table 5.

The Council continued to recommend a trawl halibut PSC mortality limit of 2,000 mt. The PSC limit has remained unchanged since 1989. Regulations at § 679.21(d)(3)(iii) authorize separate apportionments of the trawl halibut PSC limit between trawl fisheries for deep-water and shallow-water species. Regulations at § 679.21(d)(5) authorize seasonal apportionments of halibut PSC limits. For 1999, the Council recommended delaying the release of the third seasonal apportionment of trawl halibut PSC limits in July to facilitate inseason management of directed trawl fisheries, particularly rockfish.

NMFS concurs with the Council's recommendations described here and listed in Table 5. The following types of information as presented in, and summarized from, the current SAFE report, or as otherwise available from NMFS, Alaska Department of Fish and Game, the International Pacific Halibut Commission (IPHC) or public testimony were considered:

(A) Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is based on 1998 observed halibut bycatch rates and NMFS's estimates of groundfish catch. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through December 31, 1998, is 2,023 mt, 296 mt, and 13 mt, respectively, for a total of 2,332 mt.

Halibut bycatch restrictions seasonally constrained trawl gear and hook-and-line gear fisheries throughout 1998. Trawling for the deep-water fishery complex was closed during the first quarter on March 10 (63 FR 12688, March 16, 1998), for the second quarter on April 21 (63 FR 20541, April 27, 1998) and for the third quarter on July 28 (63 FR 40839, July 31, 1998). The shallow-water complex was closed in the second quarter on May 2 (63 FR 24984, May 6, 1998) and in the third quarter on August 3 (63 FR 42281, August 7, 1998). All trawling was closed in the fourth quarter on October 9 (63 FR 55341, October 15, 1998). The use of hook-and-line gear for groundfish other than sablefish or demersal shelf rockfish was closed in the first seasonal apportionment on April 18 (63 FR 19850, April 22, 1998) and for the remainder of the year on May 26 (63 FR 29670, June 1, 1998, and 63 FR 45765, August 27, 1998).

The amount of groundfish that trawl gear and hook-and-line gear might have harvested if halibut catch limitations had not restricted the season in 1998, is unknown.

(B) Expected Changes in Groundfish Stocks

At its December 1998 meeting, the Council adopted higher ABCs for Pacific cod, arrowtooth flounder, POP, and other rockfish than those established for 1998. The Council adopted lower ABCs for pollock, deep water flatfish, sablefish, northern rockfish, and thornyhead rockfish than those established for 1998. More information on these changes is included in the Final SAFE report (November 1998) and in the Council and SSC minutes.

(C) Expected Changes in Groundfish Catch

The total of the 1999 TACs for the GOA is 306,535 mt, a decrease of 6 percent from the 1998 TAC total of 327,046 mt. Those fisheries for which the 1999 TACs are lower than in 1998 are pollock (decreased to 100,920 mt from 124,730 mt), deep water flatfish (decreased to 6,050 mt from 7,170 mt), sablefish (decreased to 12,700 mt from 14,120 mt), northern rockfish (decreased to 4,990 mt from 5,000 mt), thornyhead rockfish (decreased to 1,990 mt from 2,000 mt), and other species (decreased to 14,600 mt from 15,570 mt). Those species for which the 1999 TACs are higher than in 1998 are Pacific cod (increased to 67,835 mt from 66,060 mt), shallow water flatfish (increased to 18,770 mt from 18,630 mt), POP (increased to 12,590 mt from 10,776 mt), and other rockfish (increased to 5,270 mt from 2,170 mt).

(D) Current Estimates of Halibut Biomass and Stock Condition

The stock assessment for 1998 conducted by the IPHC indicates total exploitable biomass estimates of Pacific halibut in the BSAI and GOA management areas together to be 227,366 mt using an age-specific estimate and 246,190 mt using a length-specific estimate from the standardized hook-and-line survey for 1999. In the age-specific estimate, the assumption is that the selection of fish by the survey is based primarily on the age of the fish and reflects the availability of fish of different ages on the grounds. In the length-specific estimate, the assumption is that the selection of fish by the survey is based primarily on the size of the fish,

because fish of different sizes are not equally vulnerable to the survey gear.

New information used in the stock assessment in 1998 includes updated assessment methods and results, IPHC hook-and-line surveys, NMFS trawl survey catches of halibut, and updated information on removals of halibut from all sources. For 1998, the assessment model contains only one significant change from last year. The IPHC had used an estimated rate of natural mortality of M = 0.20. This value was an average of a wide range of estimates. Some previous IPHC studies have employed estimates other than 0.20. The IPHC staff reviewed available evidence in consideration of these results and due to scientific uncertainty adopted a more conservative value of M = 0.15, a 25-percent reduction from the previous value. The major changes in the estimates of exploitable biomass for 1999 derive from the change in the estimate of natural mortality, rather than from stock condition indices.

Pacific halibut biomass remains at a relatively high level but has declined slightly in the central and southern portions of the range. Recruitment of halibut in recent years has declined from the peak seen in 1995, when the 1987 year class began recruiting to the fishery. Exploitable biomass is expected to decline over the next three to five years as this year class passes out of the exploitable stock. Additional information on the Pacific halibut stock assessment may be found in the SAFE report.

(E) Other Factors

The proposed 1999 specifications (63 FR 71876, December 30, 1998) discussed potential impacts of expected fishing for groundfish on halibut stocks, as well as methods available for, and costs of, reducing halibut bycatch in the groundfish fisheries.

7. Fishery and Seasonal Apportionments of the Halibut PSC Limits

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP requires that the Council, in recommending seasonal apportionments of halibut PSC limits, consider: (a) Seasonal distribution of halibut, (b) seasonal distribution of target groundfish species relative to halibut distribution, (c) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catches of target groundfish species, (d) expected bycatch rates on a seasonal basis, (e) expected changes in directed groundfish fishing seasons, (f) expected actual start of fishing effort, and (g) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 1998 GOA groundfish and PSC specifications (63 FR 12027, March 12, 1998) summarize Council findings with respect to each of the FMP considerations set forth above. For 1999, the Council has reiterated its findings with respect to these FMP considerations and recommended that seasonal apportionments be unchanged from 1998, with one exception. For 1999, the Council recommended that the third seasonal apportionment of halibut PSC limits for trawl gear in the GOA be delayed until July 11 to coincide with the seasonal apportionment of halibut PSC limits for trawl gear in the BSAI and to facilitate inseason management. NMFS notes that the delay in the third seasonal apportionment until July 11 could potentially adversely affect the results of the NMFS 1999 sablefish hook-and-line survey in the GOA. Therefore, NMFS is adjusting the start of the third seasonal apportionment to July 4, which will meet the Council's objective of improving inseason management while minimizing the potential impacts of the trawl fisheries on the NMFS sablefish survey later in July. Pacific halibut PSC limits, and apportionments thereof, are presented in Table 5. Regulations at § 679.21(d)(5)(iii) and (iv) specify that any overages or shortfalls in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 1999 season.

TABLE 5.—FINAL 1999 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS

[The Pacific halibut PSC limit for hook-and-line gear is allocated to the demersal shelf rockfish (DSR) fishery and fisheries other than DSR. (Values are in metric tons) The hook-and-line sablefish fishery is exempt from halibut PSC limits.]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
Jan 1–Mar 31	600 (30%)	Jan 1–May 17	250 (86%)	Jan 1–Dec 31	10 (100%)
Apr 1–Jul 3	400 (20%)	May 18–Aug 31	15 (5%)		
Jul 4–Sep 30	600 (30%)	Sep 1–Dec 31	25 (9%)		
Oct 1–Dec 31	400 (20%)				
Total:	2,000 (100%)		290 (100%)		10 (100%)

Regulations at § 679.21(d)(3)(iii) authorize apportionments of the trawl halibut PSC limit to a deep-water species complex, comprised of sablefish, all rockfish targets, deep-water flatfish, rex sole and arrowtooth flounder; and a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species''. The apportionment for these two fishery complexes is presented in Table 6.

TABLE 6.—FINAL 1999 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

(Values are in Metric Tons)

Season	Shallow-water	Deep-water	Total
Jan. 20–Mar. 31	500	100	600
Apr. 1–Jul. 3	100	300	400

TABLE 6.—FINAL 1999 APPORTIONMENT OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX (VALUES ARE IN METRIC TONS)—Continued

Season	Shallow-water	Deep-water	Total
Jul. 4–Sep. 30	200	400	600
Subtotal Jan. 20–Sep. 30	800	800	1,600
Oct. 1–Dec. 31			400
Total			2,000

No apportionment between shallow-water and deep-water fishery complexes during the 4th quarter.

The Council recommended that the revised halibut discard mortality rates recommended by the IPHC be adopted for purposes of monitoring halibut bycatch mortality limits established for the 1999 groundfish fisheries. NMFS concurs with the Council's recommendation. Most of the IPHC's assumed halibut mortality rates were based on an average of mortality rates determined from NMFS observer data collected during 1996 and 1997. For fisheries where a steady trend from 1994 to 1997 towards increasing or decreasing mortality rates was observed, the IPHC recommended using the most recent year's observed rate. Rates for 1996 and 1997 were lacking for some fisheries, so rates from the most recent years were used. For fisheries where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for that gear type was recommended as a default rate. The majority of the assumed mortality rates recommended for 1999 differ slightly from those used in 1998, except for the hook-and-line Pacific cod fishery discard mortality rate, which increased to 16 percent for 1999 from 12 percent in 1998. The Council recommended that a sector specific discard mortality rate be used for the catcher vessel and the catcher/processor vessel fleets in the trawl flathead sole fishery. The recommended rates for hook-and-line targeted fisheries range from 9 to 16 percent. The recommended rates for most trawl targeted fisheries are unchanged or lower than those used in 1998 and range from 55 to 76 percent. The recommended rate for all pot targeted fisheries is 6 percent, a decrease from that used in 1998. The 1999 assumed halibut mortality rates are listed in Table 7.

TABLE 7.—1999 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead]

Gear and target	Mortality rate
Hook-and-Line:	
Pacific cod	16
Rockfish	9
Other species	16
Trawl:	
Midwater pollock	76
Rockfish	64
Shallow-water flatfish	71
Pacific cod	66
Deep-water flatfish	66
Flathead sole	
Catcher vessels	58
Catcher/processing vessels	74
Rex sole	55
Bottom pollock	73
Atka mackerel	57
Sablefish	71
Other species	66
Pot:	
Pacific cod	6
Other species	6

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule announces the final 1999 harvest specifications and associated management measures for the groundfish fishery of the Gulf of Alaska. This action affects all fishermen who participate in the GOA fishery. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region when the announced TAC specifications or apportionments thereof have been reached. Affected fishermen should keep themselves informed of such closures.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Pursuant to section 7 of the Endangered Species Act, NMFS has completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed species, including the Steller sea lion, and designated critical

habitat. The biological opinion prepared for this consultation, dated December 3, 1998, and revised December 16, 1998, concluded that the pollock fisheries in the BSAI and the GOA jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains RPAs to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures necessary to implement the RPAs were discussed at the December Council meeting and were implemented by NMFS through emergency rulemaking effective January 20, 1999 (64 FR 3437, January 22, 1999), prior to the start of the 1999 GOA pollock fishery. This final rule establishes harvest specifications in accordance with those mitigation measures as required by the RPAs on December 3, 1998, and revised on December 16, 1998, for the 1999 GOA pollock fishery. The emergency rule expires on July 19, 1999. The Council will make recommendations to NMFS on final mitigation measures for 1999 during its June meeting, and NMFS will promulgate subsequent rulemaking to implement all reasonable and prudent alternatives that NMFS determines are necessary to avoid jeopardy to the Steller sea lion and adverse modifications of its critical habitat for the remainder of the 1999 fishing year. That action may result in changes to the final specifications.

NMFS prepared an initial regulatory flexibility analysis (IRFA) pursuant to the Regulatory Flexibility Act that describes the impact the 1999 harvest specifications may have on small entities. Comments were solicited on the IRFA, however, none were received. NMFS has prepared a final regulatory flexibility analysis which analyzes the new TAC levels, this is needed because the Council has recommended new TAC amounts, based on updated survey and stock assessment information, for the final 1999 specifications. A copy of this analysis is available from NMFS (see **ADDRESSES**). Based on the number of vessels that caught groundfish in 1997, the number of fixed gear and trawl catcher vessels expected to be operating as small entities in the 1999 GOA groundfish fishery is 1,242.

NMFS analyzed a range of alternative harvest levels for the GOA. The preferred alternative would allow the GOA groundfish fisheries to continue under final specifications set at 1999 levels until the total allowable catch (TAC) is harvested or until the fishery is closed due to attainment of a PSC limit, or for other management reasons. Under the preferred alternative, the 1999 TACs would be based on the most recent scientific information as reviewed by the Plan Teams, SSC, AP, and Council and which includes public testimony and comment from the October and December Council meetings and those comments sent to NMFS on the proposed specifications. The preferred alternative also achieves OY while preventing overfishing. Small entities would receive the maximum benefits under this alternative, in that they will be able to harvest target species and species groups at the highest available level based on stock status and ecosystem concerns.

The alternative that would have the greatest immediate economic benefit to small entities would set the sum of the TACs at the maximum OY level. However, this alternative would not achieve the maximum long-term benefit in that it could result in overfishing and could lead to overfished stocks. Another alternative that was analyzed, would implement the 1998 TAC amounts for 1999. This would not be based on the most recent scientific information, and was also rejected.

No recordkeeping and reporting requirements are implemented with this final action. NMFS is not aware of any other Federal rules which duplicate, overlap or conflict with the final specifications.

The establishment of differing compliance or reporting requirements or timetables, the use of performance rather than design standards, or exempting affected small entities from any part of this action would not be appropriate because of the nature of this action.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 16 U.S.C. 3631 *et seq.*

Dated: March 5, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 121098D]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Final 1999 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final 1999 harvest specifications for groundfish; associated management measures; apportionment of reserves; request for comments.

SUMMARY: NMFS announces final 1999 harvest specifications and prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits and associated management measures for groundfish for the 1999 fishing year and to accomplish the goals and objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI.

DATES: The final 1999 harvest specifications, associated management measures, and apportionment of reserves are effective at 1200 hrs, Alaska local time (A.l.t.), March 8, 1999 through 2400 hrs, A.l.t., December 31, 1999. Comments on the apportionment of reserves must be received by March 26, 1999.

ADDRESSES: The final Environmental Assessment and Final Regulatory Flexibility Analysis prepared for the 1999 Total Allowable Catch Specifications may be obtained from the Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel, or by calling 907–586–7229. Comments on the apportionment of reserves may be sent to Sue Salveson, Assistant Regional Administrator for the Sustainable Fisheries Division, at the same address.

The Final 1999 Stock Assessment and Fishery Evaluation (SAFE) report, dated November 1998, is available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK 99510–2252 (907–271–2809).

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background for the 1999 Harvest Specifications

Groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that implement the FMP. The Council prepared the FMP, and NMFS approved it under the Magnuson-Stevens Fishery Conservation and Management Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million mt (§ 679.20(a)(1)(i)). Regulations at § 679.20(c)(3) further require NMFS to consider public comment received on proposed annual TACs and apportionments thereof and on proposed prohibited species catch (PSC) allowances and to publish final specifications in the **Federal Register**. The final specifications set forth in Tables 1 through 8 of this action satisfy these requirements. For 1999, the sum of the TACs is 2 million mt. Tables 9 through 11 specify harvest limitations for the catcher/processors listed in section 208(e) (1) through (20) of the American Fisheries Act (AFA) (Division C, title II of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999: Public Law No. 105–277).

The proposed BSAI groundfish specifications and prohibited species bycatch allowances for the groundfish fishery of the BSAI were published in the **Federal Register** on December 30, 1998 (63 FR 71867). Comments were invited and accepted through January 25, 1999. NMFS received one comment on the proposed specifications. This comment, as well as comments submitted on Amendments 51/51 regarding economic impacts of the inshore offshore allocation, are summarized and responded to in the Response to Comments section. Public consultation with the Council occurred during the December 1998 Council meeting in Anchorage, AK. After considering public comments received, as well as biological and economic data that were available at the Council's December meeting, NMFS is implementing the final 1999 groundfish specifications as recommended by the Council.

Regulations at § 679.20(c)(2)(ii) establish interim amounts of each proposed initial TAC (ITAC) and allocations thereof and proposed PSC allowances established under § 679.21 that become available at 0001 hours A.l.t., January 1 and remain available until superseded by the final specifications. NMFS published the interim 1999 groundfish harvest specifications in the **Federal Register** on January 4, 1999 (64 FR 50). The interim TACs for pollock and Atka mackerel were revised by subsequent rulemaking effective January 20, 1999 (64 FR 3437 and 64 FR 3446, respectively). Regulations at § 679.20(c)(2)(ii) do not provide for an interim specification either for the hook-and-line and pot gear sablefish community development quota (CDQ) reserve or for sablefish managed under the Individual Fishing Quota management plan. The final 1999 groundfish harvest specifications and prohibited species bycatch allowances contained in this action supersede the interim 1999 specifications.

Acceptable Biological Catch (ABC) and TAC Specifications

The Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC) reviewed current biological information about the condition of groundfish stocks in the BSAI at their October and December 1998 meetings. This information was compiled by the Council's Plan Team and is presented in the final 1999 SAFE report for the BSAI groundfish fisheries, dated November 1998. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass and other biological parameters, as well as summaries of the available information on the BSAI ecosystem and the economic condition of groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species or species category.

The ABC amounts adopted by the Council for the 1999 fishing year are based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABC and overfishing levels involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. Details of the Plan Team's recommendations for 1999 overfishing and ABC amounts for each species are provided in the final 1999 SAFE report.

At its October 1998 meeting, the SSC, AP, and Council reviewed the Plan Team's preliminary recommendations for 1999 proposed ABC amounts. The preliminary ABCs for each species for 1999 and other biological data from the September 1998 draft SAFE report were provided in the discussion supporting the proposed 1999 specifications (63 FR 71867, December 30, 1998). Based on the SSC's comments concerning technical methods and on new biological data not available in September, the Plan Team revised its ABC recommendations in the final SAFE report. The revised ABC recommendations were again reviewed and endorsed by the SSC, AP, and Council at their December 1998 meetings. The final ABCs as adopted by the Council are listed in Table 1.

The final TAC recommendations were based on the ABCs as adjusted for other biological and socioeconomic considerations, including maintaining the sum of the TACs in the required optimum (OY) range of 1.4 million to 2.0 million mt. The Council utilized the AP's TAC recommendations as a starting point while also considering individual stock vulnerability and ecosystem level concerns brought forth by the Plan Team and the SSC. None of the Council's recommended TACs for 1999 exceeds the final ABC for any species category. Therefore, NMFS finds that the recommended TACs are consistent with the biological condition of groundfish stocks.

Table 1 lists the 1999 ABC, TAC, ITAC, and CDQ reserve amounts, overfishing levels, and initial apportionments of groundfish in the BSAI. The apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—1999 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]

[All amounts are in metric tons]

Species	Area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
Pollock [4]	Bering Sea (BS)	1,720,000	992,000	992,000	892,800	99,200
	Aleutian Islands (AI).	31,700	23,800	2,000	1,800	200

TABLE 1.—1999 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), CDQ RESERVE ALLOCATION, AND OVERFISHING LEVELS OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) [1]—Continued

[All amounts are in metric tons]

Species	Area	Overfishing level	ABC	TAC	ITAC [2]	CDQ reserve [3]
	Bogoslof District ..	21,000	15,300	1,000	900	100
Pacific cod	BSAI	264,000	177,000	177,000	150,450	13,275
Sablefish [5]	BS	2,090	1,340	1,340	569	184
	AI	2,890	1,860	1,380	293	232
Atka mackerel	Total	148,000	73,300	66,400	56,440	4,980
	Western AI		30,700	27,000	22,950	2,025
	Central AI		25,600	22,400	19,040	1,680
	Eastern AI/BS		17,000	17,000	14,450	1,275
Yellowfin sole	BSAI	308,000	212,000	207,980	176,783	15,598
Rock sole	BSAI	444,000	309,000	120,000	102,000	9,000
Greenland turbot	Total	29,700	14,200	9,000	7,651	674
	BS		9,514	6,030	5,126	452
	AI		4,686	2,970	2,525	222
Arrowtooth flounder	BSAI	219,000	140,000	134,354	114,201	10,076
Flathead sole	BSAI	118,000	77,300	77,300	65,705	5,797
Other flatfish [6]	BSAI	248,000	154,000	154,000	130,900	11,550
Pacific ocean perch	BS	3,600	1,900	1,400	1,190	105
	AI Total	19,100	13,500	13,500	11,476	1,011
	Western AI		6,220	6,220	5,287	466
	Central AI		3,850	3,850	3,273	288
	Eastern AI		3,430	3,430	2,916	257
Other red rockfish [7]	BS	356	267	267	227	20
Sharpchin/Northern	AI	5,640	4,230	4,230	3,596	317
Shortraker/rougheye	AI	1,290	965	965	821	72
Other rockfish [8]	BS	492	369	369	314	27
	AI	913	685	685	583	51
Squid	BSAI	2,620	1,970	1,970	1,675	([9])
Other species [10]	BSAI	129,000	32,860	32,860	27,931	2,464
Total		3,719,391	2,247,846	2,000,000	1,748,305	174,933

[1] These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) Subarea unless otherwise specified. With the exception of pollock and for the purpose of these specifications, the Bering Sea subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see § 679.31(a)(1)). Fifteen percent of the groundfish CDQ reserve established for arrowtooth flounder and ''other species'' is allocated to a non-specific CDQ reserve found at § 679.31(g).

[4] Ten percent of the pollock TAC is allocated to the pollock CDQ fishery under paragraph 206(a) of the AFA. The pollock ITAC is equal to the TAC minus the CDQ allocation. Under authority of the AFA, NMFS is allocating 6 percent of the pollock ITAC as an incidental catch allowance (see section 206(b) of the AFA). NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates zero mt of pollock to nonpelagic trawl gear. This action is based on the Council's intent to prohibit the use of nonpelagic trawl gear in 1999 because of concerns of unnecessary incidental catch with bottom trawl gear in the pollock fishery.

[5] Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. The ITAC for sablefish reflected in Table 1 is for trawl gear only. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear is reserved for use by CDQ participants (see § 679.31(c)).

[6] ''Other flatfish'' includes all flatfish species, except for Pacific halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

[7] ''Other red rockfish'' includes shortraker, rougheye, sharpchin, and northern rockfish.

[8] ''Other rockfish'' includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye rockfish.

[9] A final rule effective on January 21, 1999, was published in the FEDERAL REGISTER on January 26, 1999 (64 FR 3877) which removes squid from the CDQ program.

[10] ''Other species'' includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the ''other species'' category.

Reserves and the Incidental Catch Allowance for Pollock

Regulations at § 679.20(b)(1)(i) require that 15 percent of the TAC for each target species or species group, except for the hook-and-line and pot gear allocation of sablefish, be placed in a non-specified reserve. The AFA supersedes this provision for pollock by requiring that the 1999 TAC for this species be fully allocated among the CDQ program, incidental catch allowance, and inshore, catcher/processor, and mothership directed fishery allowances.

With the exception of squid, regulations at § 679.20(b)(1)(iii) require that one half of each TAC amount placed in the non-specified reserve be allocated to the groundfish CDQ reserve and that 20 percent of the hook-and-line and pot gear allocation of sablefish be allocated to the fixed gear sablefish CDQ reserve. Section 206(a) of the AFA requires that 10 percent of the pollock TAC be allocated to the pollock CDQ reserve. With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the CDQ reserves are not further apportioned by gear. Regulations at § 679.21(e)(1)(i) also require that 7.5 percent of each PSC limit, with the exception of herring, be withheld as a

PSQ reserve for the CDQ fisheries. Regulations governing the management of the CDQ and PSQ reserves are set forth at §§ 679.30 and 679.31.

Under section 206(b) of the AFA, NMFS is specifying a pollock incidental catch allowance of 6 percent of the pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance was determined based on an examination of the incidental catch of pollock in non-pollock target fisheries from 1994 through 1997. During this 4-year period, the incidental catch of pollock as a percentage of the TAC ranged from a low of 4.9 percent in 1996 to a high of 6.3 percent in 1997 with a 4-year average of 5.6 percent. NMFS acknowledges that the incidental catch of pollock in other fisheries declined in 1998 to about 3 percent of the TAC, possibly as a result of new mandatory retention and utilization standards for this species (§ 679.27). However, NMFS believes that a 6-percent incidental catch allowance is needed for 1999 in order to effectively manage the fishery without exceeding the overall TAC for pollock.

The Administrator, Alaska Region, NMFS (Regional Administrator) has determined that the ITACs specified for the species listed in Table 2 need to be supplemented from the non-specified reserve because U.S. fishing vessels have demonstrated the capacity to harvest their full TAC allocations. Therefore, in accordance with § 679.20(b)(3), NMFS is apportioning the amounts shown in Table 2 from the nonspecified reserve to increase the ITAC to an amount that is equal to TAC minus CDQ reserve. A release of a portion of the pollock incidental catch allowance is discussed separately below.

TABLE 2.—APPORTIONMENT OF RESERVES TO ITAC CATEGORIES

Species—area or subarea	Reserve amount (mt)	Final ITAC (mt)
Atka mackerel—Western Aleutian Islands	2,025	24,975
Atka mackerel—Central Aleutian Islands	1,680	20,720
Atka mackerel—Eastern Aleutian Is. & Bering Sea subarea	1,275	15,725
Pacific ocean perch—Western Aleutian Islands	466	5,753
Pacific ocean perch—Central Aleutian Islands	288	3,561
Pacific ocean perch—Eastern Aleutian Islands	257	3,173
Pacific cod—BSAI	13,275	163,725
Shortraker/rougheye rockfish—Aleutian Islands	72	893
Sharpchin/Northern rockfish—Aleutian Islands	317	3,913
Total	19,655	242,438

Apportionment of Pollock TAC to Vessels Using Nonpelagic Trawl Gear

Regulations at § 679.20(a)(5)(i)(B) authorize NMFS, in consultation with the Council, to limit the amount of pollock that may be taken in the directed fishery for pollock using nonpelagic trawl gear. At its June 1998 meeting, the Council adopted management measures that, if approved by NMFS, would prohibit the use of nonpelagic trawl gear in the directed fishery for pollock and reduce specified prohibited species bycatch limits by amounts equal to anticipated savings in bycatch or bycatch mortality that would be expected from this prohibition.

At its December 1998 meeting, NMFS informed the Council that the proposed prohibition on the use of nonpelagic trawl gear in the BSAI pollock fishery will not be effective in time for the 1999 pollock A season fishery that started on January 20. Therefore, the Council recommended that none of the BSAI pollock TAC be allocated to the directed fishery for pollock with nonpelagic trawl gear. NMFS concludes that this action is necessary to reduce unnecessary bycatch of PSC and incidental catch of other groundfish species in the 1999 pollock fishery and to carry out the Council's intent for this fishery.

Pollock Allocations Under the AFA

Section 206(a) of the AFA requires that 10 percent of the BSAI pollock TAC be allocated as a directed fishing allowance to the CDQ program. The remainder of the BSAI pollock TAC, after the subtraction of an allowance for the incidental catch of pollock by vessels, including CDQ vessels, harvesting other groundfish species, is allocated as follows: 50 percent to catcher vessels harvesting pollock for processing by the inshore component, 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component, and 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

The AFA also contains three specific requirements concerning pollock and pollock allocations. First, section 210(c) of the AFA requires that not less than 8.5 percent of the pollock allocated to vessels for processing by offshore catcher/processors be available for harvest by offshore catcher vessels listed in section 208(b) harvesting pollock for processing by offshore catcher/processors listed in section 208(e). These amounts are listed in Table 3. Second, paragraph 210(e)(1) prohibits any individual, corporation, or other entity from harvesting a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery. For 1999, based on a TAC of 992,000 mt, this limit is 173,600 mt. Third, paragraph 208(e)(21) of the AFA specifies that catcher/processors qualifying to fish for pollock under this paragraph are prohibited from harvesting in the aggregate a total of more than one-half (0.5) percent of the pollock allocated to vessels for processing by offshore catcher/processors.

Implementation of Steller Sea Lion Conservation Measures

On January 22, 1999, NMFS published an emergency interim rule (64 FR 3437), implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. The emergency rule, effective January 20, 1999, through July 19, 1999, implements three types of management measures for the pollock fisheries in the BSAI: (1) measures to temporarily disperse fishing effort, (2) measures to spatially disperse fishing effort, and (3) pollock trawl exclusion zones around important Steller sea lion rookeries and haulouts.

The Council, as part of its emergency rule, recommended that NMFS close the entire Aleutian Islands Subarea to directed fishing for pollock and that the pollock TAC for the Aleutian Islands subarea be reduced to 2,000 mt to provide for incidental catch of pollock by vessels participating in other groundfish fisheries (see Table 1).

Emergency interim regulations at §§ 679.20(a)(5)(i)(C) and 679.23(e)(4) apportion the pollock ITAC in the BSAI for the inshore and catcher/processor sectors into four seasonal allowances as follows: A1 season, January 20 through February 15, 27.5 percent; A2 season, February 20 through April 15, 12.5 percent; B season, August 1 through September 15, 30 percent; C season, September 15 until November 1, 30 percent (see Table 3 below). The mothership sector has a combined A1-A2 seasonal allowance beginning on February 1 and ending on April 15, equal to 40 percent of the pollock allocation to this sector. The mothership B and C seasonal apportionments are equal to those of the inshore and catcher/processor sectors. The Council recommended that the CDQ pollock reserve be apportioned into two seasonal allowances: A season, January 20 through April 15, 45 percent of the CDQ reserve for pollock; B season, April 15 through December 31, 55 percent of the CDQ reserve for pollock.

Under the emergency rule, overages and underages of seasonal TAC apportionments are ''rolled over'' to subsequent fishing seasons during the same year, except that the combined fishing activities of all sectors during a fishing season may not exceed 30 percent of the annual TAC and limitations on harvest within critical habitat.

The Regional Administrator has determined that a portion of the pollock incidental catch allowance equal to 7,142 mt should be apportioned to the directed fishery in the Bering Sea subarea for the A season only. The amount of pollock apportioned in effect reduces the combined A1–A2 incidental catch allowance for pollock to 4 percent. This is required to allow for the maximum harvest of the pollock TAC within the seasonal harvest limitations of the emergency rule (64 FR 3437), which prohibits apportioning amounts of pollock into the B or C seasons that would cause any seasonal harvest to exceed 30 percent of the annual pollock TAC. Due to concerns over the unpredictability of the 1999 pollock fishery, NMFS at this time is not apportioning any of the B or C incidental catch allowances. However, NMFS may adjust these specifications if the remaining pollock incidental catch allowance appears to be in excess of anticipated catch in non-pollock groundfish fisheries and an apportionment is necessary to allow for maximum harvest of the pollock TAC. Conversely, NMFS may determine that the incidental catch allowance must be increased to fully account for the incidental catch of pollock in non-pollock directed groundfish fisheries. Any adjustments to the 1999 pollock incidental catch allowance will be accompanied under separate rulemaking that NMFS must pursue to provide for management of pollock during the B and C seasons.

The management measures contained in the emergency rule are effective through July 19, 1999. NMFS anticipates extending these provisions an additional 180 days upon recommendation by the Council with additional modifications as required by the Biological Opinion on the pollock and Atka mackerel fisheries dated December 3, 1998, and revised December 16, 1998. Consequently, these final specifications may be further amended to comport with future emergency rulemaking.

TABLE 3.—SEASONAL ALLOWANCES OF THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1]

[All amounts are in metric tons]

Sector	1999 TAC	Seasonal Apportionments					
		A–1 [2]		A–2 [3]		B [4]	C [5]
		Total	CH limit	Total	CH limit		
Bering Sea Subarea	992,000	.....	.....	.....	.....	.....	.....
Inshore	423,187	117,850	[6] 82,495	53,568	[7] 37,498	125,885	125,885
Offshore C/Ps [7]	338,550	94,280	37,712	42,855	17,142	100,708	100,708
Catch by C/Ps	309,773	86,266	34,506	39,212	15,685	92,148	92,148
Catch by CVs	28,777	8,014	3,206	3,643	1,457	8,560	8,560
Sec. 208(e)(21) [8]	1,693	685	.....	.....	.....	504	504
Mothership [9]	84,637	34,284	17,142	.....	.....	25,177	25,177
Incidental catch [10]	46,426	.....	.....	.....	.....	.....	.....
CDQ [11]	99,200	44,640	44,640	.....	.....	54,560	.....
Aleutian Islands [12]	2,000						
Inshore	846						
Offshore C/Ps	676						
Catch by C/Ps	619						
Catch by CVs	57						
Mothership	169						
Incidental catch	109						
CDQ	200						
Bogoslof District [12]	1,000						
Inshore	423						
Offshore C/Ps	338						
Catch by C/Ps	309						
Catch by CVs	28						
Mothership	84						
Incidental catch	55						

TABLE 3.—SEASONAL ALLOWANCES OF THE INSHORE, CATCHER/PROCESSOR, MOTHERSHIP, AND CDQ COMPONENT ALLOCATIONS OF POLLOCK TAC AMOUNTS [1]—Continued

[All amounts are in metric tons]

Sector	1999 TAC	Seasonal Apportionments					
		A–1 [2]		A–2 [3]		B [4]	C [5]
		Total	CH limit	Total	CH limit		
CDQ	100						

[1] After subtraction for the CDQ reserve and the incidental catch allowance, the pollock TAC is allocated as follows: inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. Under section 206(a) of the AFA, the CDQ reserve for pollock is 10 percent. NMFS, under regulations at § 679.20(a)(5)(i)(B), allocates zero mt of pollock to nonpelagic trawl gear. This action is based on the Council's intent to prohibit the use of nonpelagic trawl gear in 1999 because of concerns of unnecessary incidental catch with bottom trawl gear in the pollock fishery. Amounts are in metric tons.

[2] January 20 through February 15.

[3] February 20 through April 15.

[4] August 1 through September 15.

[5] September 15 through November 1.

[6] Under the emergency rule (64 FR 3437), NMFS will close the Critical Habitat (CH)/CVOA conservation zone to inshore vessels greater than 99 ft (30.4 m) LOA while maintaining a sufficient CH/CVOA allowance to support fishing activities by inshore catcher vessels under 99 ft (30.4 m) LOA for the duration of the current opening. However, once the specified CH/CVOA limit is reached, all inshore vessels will be prohibited from engaging in directed fishing for pollock inside the CH/CVOA conservation zone.

[7] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors (C/Ps) shall be available for harvest only by eligible catcher vessels (CVs) delivering to listed catcher/processors.

[8] The AFA requires that vessels described in section 208(e)(21) be prohibited from exceeding a harvest amount of one-half of one percent of the directed fishing allowance allocated to vessels for processing by listed catcher/processors.

[9] The mothership sector has a single A season apportionment from February 1 through April 15, which is equal to 40 percent of its annual pollock allocation.

[10] The pollock incidental catch allowance is 6 percent of the TAC after subtraction of the CDQ reserve. However, an amount of the incidental catch allowance in the Bering Sea Subarea (7,142 mt), is apportioned to the directed fishery, to reduce the A season incidental catch allowance to 4 percent.

[11] The CDQ sector has two seasonal allocations, the first from January 20 through April 15 (45 percent of their annual CDQ reserve) and the second from April 15 through December 31 (55 percent of their annual CDQ reserve). The CDQ sector can harvest its entire allocation within designated critical habitat areas which are open for fishing.

[12] The Aleutian Islands Subarea and the Bogoslof District are closed to directed fishing for pollock. The amounts specified are for incidental catch amounts only, and are not apportioned by season.

Allocation of the Atka Mackerel TAC

Due to concerns about the potential impact of the Atka mackerel fishery on Steller sea lions and their critical habitat, NMFS published a final rule on January 22, 1999 (64 FR 3446), which implements temporal and spatial changes in the Atka mackerel fisheries. This rule divides the BSAI Atka mackerel ITAC into two equal seasonal allowances. The first allowance is made available for directed fishing from January 1 to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season)(Table 4). Additionally, fishing with trawl gear in areas defined as Steller sea lion critical habitat (see Table 1, Table 2, and Figure 4 to 50 CFR part 226), within the Western and Central Aleutian Islands subareas is prohibited during each Atka mackerel season when specified percentages of the TAC are harvested within designated critical habitat areas. In 1999, the specified catch percentage is 65 percent of each seasonal allowance for the Western Aleutian Islands and 80 percent of each seasonal allowance for the Central Aleutian Islands. A Steller sea lion critical habitat closure to fishing with trawl gear within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

For the Eastern Aleutian Islands and Bering Sea subarea, no critical habitat closures are established under the final rule based on Atka mackerel catch percentages inside critical habitat areas. However, the final rule does include a variety of changes to current critical habitat designations in both time and space within the Aleutian Islands District. See the final rule published on January 22, 1999 (64 FR 3446), for a detailed description of regulatory changes to the Atka mackerel fishery.

Under § 679.20(a)(8), up to 2 percent of the Eastern Aleutian Islands district and the Bering Sea subarea Atka mackerel ITAC may be allocated to the jig gear fleet. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. At its December 1998 meeting, the Council recommended that 1 percent of the Atka mackerel TAC in the Eastern Aleutian Islands district/Bering Sea subarea be allocated to the jig gear fleet. Based on an ITAC of 15,725 mt, the jig gear allocation is 157 mt.

TABLE 4.— 1999 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC, [1 2]

[All amounts are in metric tons]

Subarea and component	TAC	CDQ reserve	ITAC	Seasonal apportionment [3]			
				A season [4]		B season [5]	
				Total	CH limit [6]	Total	CH limit [6]
Western Aleutian Islands	27,000	2,025	24,975	12,487	8,117	12,487	8,117

TABLE 4.— 1999 SEASONAL AND SPATIAL APPORTIONMENTS, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC,[1 2]—Continued

[All amounts are in metric tons]

Subarea and component	TAC	CDQ reserve	ITAC	Seasonal apportionment[3]			
				A season[4]		B season[5]	
				Total	CH limit[6]	Total	CH limit[6]
Central Aleutian Islands	22,400	1,680	20,720	10,360	8,288	10,360	8,288
Eastern AI/BS subarea[7]	17,000	1,275	15,725	.....	.....	.....	.....
Jig (1%)[8]	.....	157	.....	.....	.....	.....	
Other gear (99%)	.....	.....	15,568	7,784	.....	7,784	.....
Total	66,400	4,980	61,420	30,631	.....	30,631	.....

[1] The reserve has been released for Atka mackerel (see Table 2).
[2] A final rule implementing changes to the Atka mackerel fishery was published in the FEDERAL REGISTER on January 22, 1999 (64 FR 3446).
[3] The seasonal apportionment of Atka mackerel is 50 percent in the A season and 50 percent in the B season.
[4] January 1 through April 15.
[5] September 1 through November 1.
[6] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside CH (Table 1, Table 2, and Figure 4 of 50 CFR part 226). In 1999, the percentage of each seasonal allowance available for fishing inside CH is 65 percent in the Western AI and 80 percent in the Central AI. When these CH allowances are reached, critical habitat areas will be closed to trawling until NMFS closes Atka mackerel to directed fishing within the same district.
[7] Eastern Aleutian Islands District and Bering Sea subarea.
[8] Regulations at § 679.20 (a)(8) require that up to 2 percent of the Eastern AI area ITAC be allocated to the Jig gear fleet. The amount of this allocation is 1 percent and was determined by the Council based on anticipated harvest capacity of the jig gear fleet. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. The portion of the Pacific cod TAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. At its December 1998 meeting, the Council recommended seasonal allowances for the portion of the Pacific cod TAC allocated to the hook-and-line and pot gear fisheries. The seasonal allowances are authorized under § 679.20(a)(7)(iv) and are based on the criteria set forth at § 679.20(a)(7)(iv)(B). They are intended to provide for the harvest of Pacific cod when flesh quality and market conditions are optimum and when Pacific halibut bycatch rates are low. Table 5 lists the 1999 allocations and seasonal apportionments of the Pacific cod ITAC. Consistent with § 679.20(a)(7)(iv)(C), any portion of the first seasonal allowance of the hook-and-line and pot gear allocation that is not harvested by the end of the first season will become available on September 1, the beginning of the third season.

TABLE 5.—1999 GEAR SHARES AND SEASONAL APPORTIONMENTS OF THE BSAI PACIFIC COD TAC[1]

Gear	Percent ITAC	Share ITAC (mt)	Seasonal apportionment	
			Date	Amount
Jig	2	3,275	Jan 1–Dec 32	3,275
Hook-&-line/pot gear	51	83,500	Jan 1-Apr 30[2]	60,000
	.....	.....	May 1–Aug 31	8,500
	.....	.....	Sep 1-Dec 31	15,000
Trawl gear	47	76,950	Jan 1–Dec 31	76,950
C.V. (50%)	.....	38,475	.....	.....
C/P (50%)	.....	38,475	.....	.....
Total	100	163,725	.....	.....

[1] For Pacific cod in the BSAI, the reserve has been released (see Table 2).
[2] Any unused portion of the first seasonal Pacific cod allowance specified for the Pacific cod hook-and-line or pot gear fishery will be reapportioned to the third seasonal allowance.

Allocation of the Shortraker and Rougheye Rockfish TAC

Under § 679.20(a)(9), the ITAC of shortraker rockfish and rougheye rockfish specified for the Aleutian Islands subarea is allocated 30 percent to vessels using non-trawl gear and 70 percent to vessels using trawl gear. Based on a final ITAC of 893 mt, the trawl allocation is 625 mt and the non-trawl allocation is 268 mt.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4) require that sablefish TACs for the BSAI subareas be allocated between trawl and hook-and-line or pot gear types. Gear allocations of TACs are established as follows: Bering Sea subarea: Trawl gear, 50 percent; hook-and-line/pot gear, 50 percent; and Aleutian Islands subarea: Trawl gear, 25 percent; hook-and-line/pot gear, 75 percent. Regulations at § 679.20(b)(1)(iii)(B) require that 20

percent of the hook-and-line and pot gear allocation of sablefish be reserved as sablefish CDQ. Additionally, regulations at § 679.20(b)(iii)(A) require that 7.5 percent of the trawl allocation of sablefish (one half of the reserve) be withheld as groundfish CDQ reserve. Gear allocations of the sablefish TAC and CDQ reserve amounts are specified in Table 6.

TABLE 6.—1999 GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

Subarea and gear	Percent of TAC	Share of TAC (mt)	ITAC (mt)[1]	CDQ reserve
Bering Sea:				
Trawl[2]	50	670	569	50
Hook-&-line/pot gear[3]	50	670	N/A	134
Total	100	1,340	569	184
Aleutian Islands:				
Trawl[2]	25	345	293	25
Hook-&-line/pot gear[3]	75	1,035	N/A	207
Total	100	1,380	293	232

[1] Except for the sablefish hook-and-line and pot gear allocation, 15 percent of TAC is apportioned to reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the multi-species CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of Prohibited Species Catch (PSC) Limits for Halibut, Crab and Herring

PSC limits for halibut are set in regulations at § 679.21(e). For the BSAI trawl fisheries, the limit is 3,775 mt mortality of Pacific halibut, and, for non-trawl fisheries, the limit is 900 mt mortality. PSC limits for crab and herring are specified annually based on abundance and spawning biomass.

For 1999, the PSC limit of red king crab in Zone 1 for trawl vessels is 200,000 crab. Based on the criteria set out at § 679.21(e)(1)(ii), the number of mature female red king crab was estimated in 1998 to be above the threshold of 8.4 million animals, and the effective spawning biomass is estimated to be 56 million pounds (25,401 mt) (greater than the 55 million pound (24,947 mt) threshold level).

The 1999 *C. bairdi* PSC limit for trawl gear is 750,000 animals in Zone 1 and 1,878,000 animals in Zone 2. These limits are based on the most recent survey data from 1998 and on the criteria set out at § 679.21(e)(1)(iii). In Zone 1, *C. bairdi* abundance was estimated to be greater than 150 million and less than 270 million animals. In Zone 2, *C. bairdi* abundance was estimated to be less than 175 million animals and, therefore, calculated at 1.2 percent of the abundance level of 156.6 million crabs, resulting in the limit of 1.878 million crabs.

Under § 679.21(e)(1)(iv), the PSC limit for *C. opilio* is based on total abundance as indicated by the NMFS standard trawl survey. The *C. opilio* PSC limit is set at 0.1133 percent of the 1998 Bering Sea abundance index, with a minimum PSC of 4.5 million crab and a maximum PSC of 13 million crab. Based on the 1998 survey estimate of 3.233 billion crabs, the calculated limit would be 3,663,000 crabs. Because this limit falls below the minimum level, the 1999 *C. opilio* PSC limit is 4.5 million crabs.

Under § 679.21(e)(1)(vi), the PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. NMFS's best estimate of 1999 herring biomass is 168,512 mt. This amount was derived using 1998 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the herring PSC limit for 1999 is 1,685 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is reserved as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit among five fishery categories. The fishery bycatch allowances for the trawl and non-trawl fisheries are listed in Table 7.

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). At its December meeting, the Council adopted a motion to limit the RKCSS to 30 percent of the total red king crab allocated to the rock sole/flathead sole/''other flatfish'' fishery category. This action is needed to optimize the groundfish harvest relative to red king crab bycatch.

Regulations at § 679.21(e)(4)(ii) authorize the exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, the Council recommended that pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories be exempt from halibut bycatch restrictions because these fisheries use selective gear types that take comparatively few halibut. In 1998, total groundfish catch for the pot gear fishery in the BSAI was approximately 14,118 mt with an associated halibut bycatch mortality of about 43 mt. The 1998 groundfish jig gear fishery harvested about 192 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) length overall and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

As in past years, the Council recommended that the sablefish IFQ fishery be exempt from halibut bycatch restrictions because of the sablefish and halibut IFQ program (subpart D of 50 CFR part 679). The IFQ program requires that legal-sized halibut be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ. This action results in lowered

amounts of halibut discard in the fishery. In 1995, about 36 mt of halibut discard mortality was estimated for the sablefish IFQ fishery. A similar estimate for 1996 through 1998 has not been calculated, but NMFS believes that it would not be significantly different.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts. At its December meeting, the Council recommended seasonal apportionments which were adopted by NMFS and which are specified in Table 7.

TABLE 7.—1999 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red King Crab (animals) Zone 1	C. opilio (animals) COBLZ [1]	C. bairdi (animals)	
					Zone 1	Zone 2
Yellowfin sole	955	254	19,800	3,108,786	260,894	1,128,824
Jan. 20–March 31	270					
April 1–May 10	200					
May 11–July 3	95					
July 4–Dec. 31	390					
Rock sole/oth.flat/flat sole [2]	755	22	103,950	766,552	279,528	376,274
Jan. 20–March 29	461					
March 30–July 3	123					
July 4–Dec. 31	171					
Turbot/sablefish/arrowtooth [3]		10		42,585		
Rockfish:						
July 4–Dec. 31	71	8		42,585		7,378
Pacific cod	1,473	22	14,850	127,758	139,950	205,528
Mid-water trawl pollock [4]		1,217				
Pollock/Atka mackerel/other [5]	238	152	1,850	74,234	13,378	19,146
RKC savings subarea [2]			44,550			
Total Trawl PSC	3,492	1,685	185,000	4,162,500	693,750	1,737,150
Non-Trawl Fisheries						
Pacific cod–Total	748					
Jan. 1–April 30	457					
May 1–Sept. 14	0			N/A		
Sept. 15–Dec. 31	291					
Other non-trawl–Total	84					
May 1–Aug. 31 [6]	42					
Sept. 1–Dec. 31	42					
Groundfish pot & jig	exempt					
Sablefish hook-&-line	exempt					
Total Non-Trawl	832					
PSQ Reserve [7]	351		15,000	337,500	56,250	140,850
Grand Total	4,675	1,685	200,000	4,500,000	750,000	1,878,000

[1] *C. opilio* Bycatch Limitation Zone. Boundaries are defined at § 679.21(e)(7)(iv)(B). At its December meeting the Council further apportioned *C. opilio* by percentage to the following fisheries: yellowfin sole 73 percent, rock sole 18 percent, turbot 1 percent, rockfish 1 percent, Pacific cod 3 percent, and pollock 4 percent.

[2] The Council at its December 1998 meeting limited red king crab for trawl fisheries within the RKCSS to 30 percent of the total allocation to the rock sole, flathead sole, and other flatfish fishery category (§ 679.21(e)(3)(ii)(B)).

[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.

[4] Halibut and crab bycatch in the midwater trawl pollock fishery is deducted from the allowances for the pollock/Atka mackerel/other species category.

[5] Pollock other than pelagic trawl pollock, Atka mackerel, and ''other species'' fishery category.

[6] Consistent with § 679.21(e)(5)(iv)(A), any portion of the first seasonal allowance of the Pacific cod halibut allocation that is not harvested by the end of the first season will become available on September 15, the beginning of the second season.

[7] With the exception of herring, 7.5 percent of each PSC limit is allocated to the multi-species CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear or season.

To monitor halibut bycatch mortality allowances and apportionments, the Administrator, Alaska Region, NMFS (Regional Administrator), will use observed halibut bycatch rates, assumed mortality rates, and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment will be reached. The Regional Administrator monitors a fishery's halibut bycatch mortality allowances using assumed mortality rates that are based on the best information available, including information contained in the annual SAFE report.

At its December meeting, the Council adopted the assumed recommended halibut mortality rates developed by staff of the International Pacific Halibut Commission for the 1999 BSAI groundfish fisheries (see Table 8). This is needed for purposes of monitoring halibut bycatch allowances established for 1999 (see Table 7). The justification for these mortality rates is discussed in the final SAFE report dated November 1998.

TABLE 8.—ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR THE BSAI FISHERIES DURING 1999

Fishery	Assumed mortality (percent)
Hook-and-line gear fisheries:	
Rockfish	12
Pacific cod	11
Greenland turbot	19
Sablefish	17
Other Species	11
Trawl gear fisheries:	
Midwater pollock	85
Non-pelagic pollock	76
Yellowfin sole	78
Rock sole	76
Flathead sole	62
Other flatfish	69
Rockfish	72
Pacific cod	69
Atka mackerel	85
Greenland turbot	73
Sablefish	23
Other species	69
Pot gear fisheries:	
Pacific cod	4
Other species	4

Protections for Other Fisheries Under the AFA

Section 211(b)(2)(A) of the AFA prohibits catcher/processors listed under paragraphs 1 through 20 of section 208(e) (listed catcher/processors) from harvesting in the aggregate more than a specified amount of each non-pollock groundfish species in the BSAI. Except for Atka mackerel, the catch limitations specified for the listed catcher/processors are equivalent to the percentage of non-pollock groundfish harvested in the non-pollock fisheries by the listed catcher/processors and by those listed under section 209 of the AFA during 1995, 1996, and 1997. The non-pollock groundfish harvest amounts by these vessels in the BSAI from 1995 through 1997 are shown in Table 9. These data were used to calculate the relative amount of non-pollock groundfish TACs harvested by pollock catcher/processors in the non-pollock fisheries and then were used to determine the harvest limits for non-pollock groundfish by listed catcher/processors in the 1999 BSAI fisheries.

All non-pollock groundfish that are harvested by listed catcher/processors will be deducted from the harvest limits, see Table 9. However, non-pollock groundfish that is delivered to listed catcher/processors by catcher vessels will not be deducted from the 1999 harvest limits for the listed catcher/processors.

TABLE 9.—HISTORICAL CATCH RATIO AND 1999 AGGREGATE CATCH LIMITS FOR POLLOCK VESSELS DESCRIBED UNDER SECTION 208(E) OF THE AFA [1]

[All amounts are in metric tons]

Target species [2]	Area	1995–1997			1999 ITAC available to trawl C/Ps	1999 C/P harvest limit
		Total catch	Available TAC	Ratio [3]		
Pacific cod trawl [4]	BSAI	13,547	51,450	0.263	38,475	10,119
Sablefish trawl [5]	BS	8	1,736	0.005	569	3
	AI	1	1,135	0.001	293	0
Atka mackerel [6]	Western AI	.....	.....	0.200	24,975	4,995
	Central AI	.....	.....	0.115	20,720	2,383
Yellowfin sole	BSAI	123,003	527,000	0.233	176,783	41,190
Rock sole	BSAI	14,753	202,107	0.073	102,000	7,446
Greenland turbot	BS	168	16,911	0.010	5,126	51
	AI	31	6,839	0.005	2,525	13
Arrowtooth flounder	BSAI	788	36,873	0.021	114,201	2,398
Flathead sole	BSAI	3,030	87,975	0.034	65,705	2,234
Other flatfish	BSAI	12,145	92,428	0.131	130,900	17,148
Pacific ocean perch [7]	BS	58	5,760	0.010	1,190	12
	Western AI	356	12,440	0.029	5,754	167
	Central AI	95	6,195	0.015	3,562	53
	Eastern AI	112	6,265	0.018	3,173	57
Other red rockfish	BS	75	3,034	0.025	227	6
Sharpchin/Northern	AI	1,034	13,254	0.078	3,913	305
Shortraker/Rougheye [8]	AI	68	2,827	0.024	625	15
Other rockfish	BS	39	1,026	0.038	314	12
	AI	95	1,924	0.049	583	29
Squid	BSAI	7	3,670	0.002	1,675	3
Other species	BSAI	3,551	65,925	0.054	27,931	1,508

[1] The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and also prohibits catcher/processors listed under paragraphs 1–20 of section 208(e) from exceeding the historical harvest percentages by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries (other than pollock) in 1995, 1996, and 1997.

[2] For further definitions of target species see Table 1.

[3] The ratio is calculated by dividing the total catch by the TAC available at the end of the year (with the exception of Atka mackerel).

[4] For Pacific cod, 47 percent of the ITAC is allocated to trawl gear, and of that 50 percent is available for listed catcher/processors. Separate catcher/processor and catcher vessel allocations became effective in 1997. Therefore, due to an inconsistency in the data, only 1997, which has a similar allocation pattern as the present, was used to calculate the historic ratio.

[5] Twenty-five percent of the sablefish ITAC is allocated to trawl in the AI subarea, 50 percent is allocated to trawl in the BS subarea.

[6] In section 211(b)(2)(C) of the AFA, catcher/processors described in paragraphs 1–20 of section 208(e) are prohibited from harvesting Atka mackerel in excess of 11.5 percent of the available TAC in the Central AI area and 20 percent in the Western AI area. These listed catcher/processors are prohibited from harvesting Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea.

[7] For Pacific ocean perch, spatial apportionments to western, central, and eastern AI subareas began in 1996; therefore only data from 1996 and 1997 were used to calculate the historic ratio.

[8] Seventy percent of the shortraker/rougheye rockfish ITAC is allocated to trawl in the Aleutian Islands subarea.

Section 211(b)(2)(C) of the AFA prohibits listed catcher/processors from fishing for Atka mackerel in the Eastern AI and BS subarea and from exceeding 11.5 percent and 20 percent of the Atka mackerel TACs available in the Central and Western AI districts, respectively. On January 22, 1999, NMFS published a final rule (64 FR 3446) to mitigate impacts of the Atka mackerel fishery on endangered Steller sea lions. The listed catcher/processor harvest limitations for Atka mackerel are subject to the proportional restrictions on harvest inside and outside critical habitat areas. As a result, the listed catcher/processors are prohibited from trawling in critical habitat areas once 65 and 80 percent of the seasonal Atka mackerel harvest limitations established for the listed catcher/processors in the Western and Central AI districts, respectively, are taken (see Table 10). A Steller sea lion critical habitat closure for fishing with trawl gear within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

TABLE 10.—ATKA MACKEREL SEASONAL AND CRITICAL HABITAT LIMITS FOR CATCHER/PROCESSOR VESSELS DESCRIBED UNDER SECTION 208(E) OF THE AFA [1] [2]

[All amounts are in metric tons]

Subarea and Component	Total ITAC	ITAC available for C/Ps	Seasonal apportionment [3]			
			A season [4]		B season [5]	
			Total	CH Limit [6]	Total	CH Limit [6]
Western Aleutian Islands	24,975	4,995	2,498	1,623	2,498	1,623
Central Aleutian Islands	20,720	2,383	1,191	953	1,191	953

[1] The Atka mackerel reserve has been released (see Table 2).
[2] Atka mackerel conservation measures are based on final regulations published in the **Federal Register** on January 22, 1999 (64 FR 3446).
[3] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed catcher/processors would be limited to harvesting no more than 20 and 11.5 percent of the available TAC in the Western and Central AI subareas respectively. Listed catcher/processors are prohibited from harvesting Atka mackerel in the Eastern Aleutian Islands District and Bering Sea subarea (section 211(b)(2)(C) of the AFA).
[4] January 1 through April 15.
[5] September 1 through November 1.
[6] Critical habitat (CH) allowance refers to the amount of each seasonal allowance that is available for fishing inside critical habitat (Table 1, Table 2, and Figure 4 of 50 CFR 226). In 1999, the percentage of TAC available for fishing inside critical habitat area is 65 percent in the Western AI and 80 percent in the Central AI. When these critical habitat allowances are reached, critical habitat areas will be closed to trawling until NMFS closes Atka mackerel to directed fishing within the same district.

On January 22, 1999, NMFS published an emergency rule (64 FR 3437) which provides the inseason authority necessary to manage the harvest of groundfish by listed catcher/processors so that the 1999 non-pollock harvest limits are not exceeded. NMFS intends to manage the listed catcher/processor non-pollock harvest limitations conservatively, consistent with the intent of the AFA, which is to limit the ability of these vessels to redistribute fishing effort into non-pollock fisheries in which they have not historically participated.

Section 211(b)(2)(B) of the AFA prohibits listed catcher/processors from harvesting more than a specified amount of each prohibited species in the BSAI. These amounts are equivalent to the percentage of prohibited species bycatch limits harvested in the non-pollock groundfish fisheries by the listed catcher/processors and by those listed under section 209 of the AFA during 1995, 1996, and 1997. Prohibited species amounts harvested by these catcher/processors in BSAI non-pollock groundfish fisheries from 1995 through 1997 are shown in Table 11. These data were used to calculate the relative amount of prohibited species catch limits harvested by pollock catcher/processors, which was then used to determine the prohibited species harvest limits for listed catcher/processors in the 1999 non-pollock groundfish fisheries. Regulations at § 679.21(e)(7)(vii) and (e)(7)(viii) do not provide for fishery-specific management of the salmon bycatch limits. Therefore, NMFS is not including salmon catch limits for the listed catcher/processors during 1999.

PSC that is caught by listed catcher/processors participating in any non-pollock groundfish fishery listed in Table 9, accrues against the 1999 PSC limits for the listed catcher/processors as outlined in section 211(b)(2)(B) of the AFA (see Table 10). The emergency rule published by NMFS to manage the AFA harvest limitations specified for listed catcher/processors provides authority to close directed fishing for groundfish to the listed catcher/processors once a 1999 PSC limitation listed in Table 11 is reached.

PSC that is caught by listed catcher/processors and listed catcher vessels while fishing for pollock accrues against either the midwater pollock or the pollock/Atka mackerel/other species fishery categories (Table 7). In the proposed specifications, NMFS incorrectly calculated the red king crab allocation for the listed catcher/processors. These final specifications make corrections to the historical catch amount, the ratio, and the 1999 limit based on Zone 1 bycatch of red king crab.

TABLE 11.—PSC LIMITS FOR CATCHER/PROCESSOR VESSELS DESCRIBED UNDER SECTION 208(E) OF THE AFA [1, 2]

[All amounts are in metric tons]

PSC species	1995—1997			1999 PSC available to trawl vessels	1999 C/P limit [3]
	PSC catch	Total PSC	Ratio [2]		
Halibut mortality	955	11,325	0.084	3,492	293
Herring	62	5,137	0.012	1,685	20
Red king crab	3,098	473,750	0.007	185,000	1,295

TABLE 11.—PSC LIMITS FOR CATCHER/PROCESSOR VESSELS DESCRIBED UNDER SECTION 208(E) OF THE AFA [1] [2]—Continued

[All amounts are in metric tons]

PSC species	1995—1997			1999 PSC available to trawl vessels	1999 C/P limit [3]
	PSC catch	Total PSC	Ratio [2]		
C. opilio	2,323,731	15,139,178	0.153	4,162,500	636,863
C. bairdi:.					
Zone 1	385,978	2,750,000	0.140	693,750	97,125
Zone 2	406,860	8,100,000	0.050	1,737,150	86,858

[1] The AFA specifies the manner in which the BSAI pollock TAC must be allocated among industry components and also prohibits catcher/processors listed under paragraphs 1–20 of section 208(e) of the AFA from exceeding the historical harvest percentages of prohibited species by such catcher/processors and those listed under section 209 relative to the total available in the offshore component in BSAI groundfish fisheries in 1995, 1996, and 1997.

[2] The ratio is calculated by dividing the PSC catch by the total PSC available.

[3] The 1999 prohibited species catch limit is calculated by multiplying the historic ratio by the PSC available to listed catcher/processors in 1999.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule announces the final 1999 harvest specifications, associated management measures, and apportionment of reserves for the groundfish fishery of the Bering Sea and Aleutian Islands management area. This action affects all fishermen who participate in the BSAI fishery. NMFS will announce closures of directed fishing in the **Federal Register** and in information bulletins released by the Alaska Region when the announced TAC specifications, or apportionments thereof, have been reached. Affected fishermen should keep themselves informed of such closures.

Comment and Response

NMFS received one letter commenting on the 1999 specifications, focusing particularly on implementation of the AFA. NMFS summarizes and responds to this comment below (Comment 1). In addition, Comment 1 in the final rule to implement BSAI amendment 51 (64 FR 3653) addressed the Council's recommended 61/39 percent allocation, which NMFS did not approve. NMFS's response to Comment 1 in the BSAI Amendment 51 rule stated that the AFA's allocations are required by statute and that they would be implemented in 1999 as a component of the annual BSAI groundfish harvest specifications. NMFS has prepared an FRFA on these final specifications that examines the economic impacts of the pollock allocation on small entities. The Council will prepare additional appropriate economic analyses as it develops measures for further implementation of the AFA.

Comment 1. NMFS' interpretation of the protections for non-pollock groundfish fisheries contained in section 211(b)(2)(A) and (B) of the AFA does not meet the intent of the AFA to protect these fisheries from competition by the listed catcher/processors. The interpretation fails to establish absolute caps on the amount of non-pollock species that the listed catcher/processors may take in both the pollock and non-pollock directed fisheries. Consequently, insufficient protection for other fisheries exists; the TAC will likely be exceeded; and overfishing will likely occur. This interpretation is inconsistent with the statutory language of the AFA and does not satisfy the AFA goals of protecting other fisheries and reducing incidental catch by listed catcher/processors.

Response. Congress was concerned that, given the ability to form fishery cooperatives in 1999, listed catcher/processors may utilize the benefits realized from fishery cooperatives and enter into or increase fishing effort in fisheries other than the pollock fishery. Section 211(b) of the AFA seeks to protect non-pollock fisheries from major and non-traditional redistributed fishing effort by listed catcher/processors. Section 211(b)(2)(A) and (B) of the AFA establishes non-pollock groundfish and prohibited species harvest limitations for the listed catcher/processors to protect non-pollock fisheries from experiencing fishing competition by listed catcher/processors beyond historical levels. Both of these sections explicitly state that these protections should apply to groundfish fisheries other than the pollock fishery. To determine non-pollock harvest limits under section 211(b)(2)(A), NMFS calculated the historical catch by the listed catcher/processors in non-pollock fisheries and obtained a historical ratio that was applied to the 1999 non-pollock groundfish TACs (see Table 9). The Council recommended that the incidental catch of groundfish in the pollock fishery also should be deducted from the annual non-pollock groundfish harvest limits for the listed catcher/processors. This action effectively reduces the amount of non-pollock groundfish that is available to listed catcher/processors because the historical catch ratio does not include non-pollock groundfish caught in the directed pollock fishery. Consequently, incentives are provided to the listed catcher/processors to minimize incidental catch in the directed pollock fishery so that non-pollock harvest limitations are not reached and opportunities for these vessels to participate in directed fisheries for other groundfish is optimized consistent with traditional harvest levels.

Many of the harvest limitations established for 1999 are small amounts of fish that will not support a directed fishery for those species or species groups by listed catcher/processors. Consequently, NMFS closed directed fishing by the listed catcher/processors for specified non-pollock species and species groups, which would not support both a directed fishery and allow for incidental catch in other directed fisheries (64 FR 4602, January 29, 1999). Non-pollock fisheries that remained open to directed fishing by the listed catcher/processors at the start of the 1999 trawl fishing season include Pacific cod, yellowfin sole, rock sole, Atka mackerel, and ''other flatfish.'' These directed fisheries will be closed in a manner that will provide for incidental catch in other listed catcher/processor fishing operations without exceeding the specified harvest limitation for a species. Thus, NMFS believes that neither the specified non-pollock harvest limitations nor the management of these limitations will

increase the likelihood of exceeding TAC amounts or reaching overfishing levels. Harvest limitations for some species, such as squid and Pacific ocean perch, may not provide sufficient incidental catch for the pollock fishery to the extent that traditional harvest levels of these species by the listed catcher/processors were taken solely in the pollock fishery.

Under section 211(b)(2)(B) of the AFA, the Council recommended and NMFS implemented PSC limitations for the listed catcher/processors that are based solely on historical bycatch amounts in non-pollock fisheries (Table 11). Therefore, prohibited species bycatch by listed catcher/processors, while fishing for groundfish (other than pollock), will be deducted from these PSC limitations. As stated above, NMFS will allow only directed fisheries for groundfish species that are supported by adequate amounts of PSC and will prohibit directed fishing by listed catcher/processors for non-pollock groundfish in a manner that will avoid a specified PSC limitation from being exceeded. However, prohibited species bycatch in the pollock fishery will be deducted from the open access allocations of PSC to the midwater pollock and pollock/Atka mackerel/ ''other species'' categories (Table 7). Because these allocations do not exceed historical bycatch amounts, the Council and NMFS believe that this management action is consistent with the intent of the AFA to protect non-pollock groundfish fisheries. Furthermore, the Council and NMFS believe that closure of the directed fishery for pollock with nonpelagic trawl gear issued under authority of the interim and final 1999 harvest specifications (§ 679.20(a)(5)(i)(B)) will reduce the actual amount of prohibited species bycatch in 1999, which is also consistent with the intent of the AFA to reduce the bycatch of prohibited species by listed catcher/processors. Therefore, NMFS believes that the measures taken by the Council and NMFS to implement section 211(b)(2) of the AFA for the 1999 fishery are consistent with the intent of the AFA.

NMFS' management of the 1999 listed catcher/processor harvest limitations is a reasonable interpretation of the statutory provisions of section 211(b)(2) of the AFA and meets the objective of that section to protect non-pollock fisheries from major and non-traditional redistributed fishing effort by the listed catcher/processors. Additionally, for 1999, NMFS will manage the fishery under current inseason management authority and will issue directed fishing closures so that none of the 1999 TACs is exceeded as a result of this interpretation.

Classification

This action is authorized under 50 CFR 679.20 and is exempt from review under E.O. 12866.

Pursuant to section 7 of the Endangered Species Act (ESA), NMFS has completed a consultation on the effects of the pollock and Atka mackerel fisheries on listed species, including the Steller sea lion, and on designated critical habitat. The Biological Opinion prepared for this consultation, dated December 3, 1998, concludes that the Atka mackerel fisheries in the BSAI are not likely to jeopardize the continued existence of Steller sea lions or adversely modify their designated critical habitat. However, the Biological Opinion dated December 3, 1998, and revised December 16, 1998, concludes that the pollock fisheries in the BSAI and the Gulf of Alaska jeopardize the continued existence of Steller sea lions and adversely modify their designated critical habitat. The biological opinion contains reasonable and prudent alternatives (RPAs) to mitigate the adverse impacts of the pollock fisheries on Steller sea lions. Specific measures necessary to implement the RPAs were discussed at the December 1998 Council meeting and were implemented by NMFS through emergency rulemaking effective on January 20, 1999, and published in the **Federal Register** on January 22, 1999 (64 FR 3437). This final rule implements those mitigation measures as required by the biological opinion for the A1 and A2 seasons only. The Council, at its June 1999 meeting, will make recommendations to NMFS on mitigation measures for the B and C seasons in 1999. NMFS intends to implement these measures by emergency rulemaking amending these final specifications.

NMFS has recently completed consultation on the effects of the 1999 BSAI groundfish fisheries on listed and candidate species, including the Steller sea lion, and on designated critical habitat. This consultation on the impacts of the 1999 BSAI groundfish specifications determined that the fishery would not jeopardize the continued existence of listed or endangered species or adversely modify designated critical habitat. In a letter dated December 2, 1998, the Fish and Wildlife Service (USFWS) extended the 1997–1998 Biological Opinion on the BSAI hook-and-line groundfish fishery and the BSAI trawl groundfish fishery for the ESA listed short-tailed albatross until it is superseded by a subsequent amendment to that opinion. Based on current information, USFWS does not anticipate that its final Biological Opinion will determine that the 1999 BSAI groundfish fishery places the short-tailed albatross in jeopardy of extinction. The statutory receipt of a final Biological Opinion and of an incidental take statement for the BSAI hook and line groundfish fishery is Friday, March 19, 1999.

NMFS prepared an initial regulatory flexibility analysis (IRFA) pursuant to the Regulatory Flexibility Act that describes the impact the 1999 harvest specifications may have on small entities. Comments were solicited on the IRFA, however, none was received. NMFS has prepared a final regulatory flexibility analysis that analyzes the new TAC levels recommended by the Council in December 1998 and based on updated survey and stock assessment information. A copy of this analysis is available from NMFS (see **ADDRESSES**). NMFS analyzed a range of alternative harvest levels for the BSAI. The preferred alternative would allow the BSAI groundfish fisheries to continue under final specifications set at 1999 levels until the TAC is harvested or until the fishery is closed due to attainment of a PSC limit or to other management reasons. Under the preferred alternative, the 1999 TACs would be based on the most recent scientific information as reviewed by the Plan Teams, SSC, AP, and Council and would include public testimony and comment from the October and December Council meetings and those comments sent to NMFS on the proposed specifications. The preferred alternative also achieves OY while preventing overfishing. Small entities would receive the maximum benefits under this alternative, in that they will be able to harvest target species and species groups at the highest available level based on stock status and ecosystem concerns.

The alternative that would have the greatest immediate economic benefit to small entities would set the sum of the TACs at the maximum OY level. However, because this alternative would not achieve the maximum long-term benefit in that it could result in overfishing and could lead to overfished stocks and because it would not be feasible under NEPA guidelines. Another alternative was analyzed. It would implement the 1998 TAC amounts for 1999, but it would not be based on the most recent scientific information. It was also rejected.

The six CDQ groups comprise 56 small governmental jurisdictions with direct involvement in groundfish CDQ fisheries that are within the RFA

definition of small entities. Based on 1997 data, NMFS estimates less than 280 small entities harvest groundfish in the BSAI.

The establishment of differing compliance or reporting requirements or timetables, the use of performance rather than design standards, or exempting affected small entities from any part of this action would not be appropriate because of the nature of this action.

This action is necessary to establish harvest limits for the BSAI groundfish fisheries for the 1999 fishing year. The groundfish fisheries in the BSAI are governed by Federal regulations at 50 CFR part 679 that require NMFS, after consultation with the Council, to publish and solicit public comments on proposed annual TACs, PSC allowances, and seasonal allowances of the TACs. No recordkeeping and reporting requirements are implemented with this final action. NMFS is not aware of any other Federal rules which duplicate, overlap, or conflict with the final specifications.

Authority: 16 U.S.C. 773 *et seq.* 16 U.S.C. 1801 *et seq.*, and 3631 *et seq.*

Dated: March 5, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 21, 50, and 54

RIN 3150–AG12

Use of Alternative Source Terms at Operating Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to allow holders of operating licenses for nuclear power plants to voluntarily replace the traditional source term used in design basis accident analyses with alternative source terms. This action would allow interested licensees to pursue cost beneficial licensing actions to reduce unnecessary regulatory burden without compromising the margin of safety of the facility. The NRC is also proposing to amend its regulations to revise certain sections to conform with the final rule published on December 11, 1996, concerning reactor site criteria.

DATES: The comment period expires on May 25, 1999. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, Mail Stop O16C1.

Deliver comments to: One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

You may also submit comments via the NRC's interactive rulemaking web site, ''Rulemaking Forum,'' through the NRC home page (http://www.nrc.gov). This site enables people to transmit comments as files (in any format, but WordPerfect version 6.1 is preferred), if your web browser supports that function. Information on the use of the Rulemaking Forum is available on the website. For additional assistance on the use of the interactive rulemaking site, contact Ms. Carol Gallagher, telephone: 301–415–5905; or by Internet electronic mail to cag@nrc.gov.

Certain documents related to this rulemaking, including comments received and the environmental assessment and finding of no significant impact may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–1081; or by Internet electronic mail to sfl@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A holder of an operating license (i.e., the licensee) for a light-water power reactor is required by regulations issued by the NRC (or its predecessor, the U.S. Atomic Energy Commission, (AEC)) to submit a safety analysis report that contains assessments of the radiological consequences of potential accidents and an evaluation of the proposed facility site. The NRC uses this information in its evaluation of the suitability of the reactor design and the proposed site as required by its regulations contained in 10 CFR Parts 50 and 100. Section 100.11, which was adopted by the AEC in 1962 (27 FR 3509; April 12, 1962), requires an applicant to assume (1) a fission product release from the reactor core, (2) the expected containment leak rate, and (3) the site meteorological conditions to establish an exclusion area and a low population zone. This fission product release is based on a major accident that would result in substantial release of appreciable quantities of fission products from the core to the containment atmosphere. A note to § 100.11 states that Technical Information Document (TID) 14844, ''Calculation of Distance Factors for Power and Test Reactors,'' may be used as a source of guidance in developing the exclusion area, the low population zone, and the population center distance.

The fission product release from the reactor core into containment is referred to as the ''source term'' and it is characterized by the composition and magnitude of the radioactive material, the chemical and physical properties of the material, and the timing of the release from the reactor core. The accident source term is used to evaluate the radiological consequences of design basis accidents (DBAs) in showing compliance with various requirements of the NRC's regulations. Although originally used for site suitability analyses, the accident source term is a design parameter for accident mitigation features, equipment qualification, control room operator radiation doses, and post-accident vital area access doses. The measurement range and alarm setpoints of some installed plant instrumentation and the actuation of some plant safety features are based in part on the accident source term. The TID–14844 source term was explicitly stated as a required design parameter for several Three Mile Island (TMI)-related requirements.

The NRC's methods for calculating accident doses, as described in Regulatory Guide 1.3, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Boiling Water Reactors''; Regulatory Guide 1.4, ''Assumptions Used for Evaluating the Potential Radiological Consequences of a Loss of Coolant Accident for Pressurized Water Reactors''; and NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants,'' were developed to be consistent with the TID–14844 source term and the whole body and thyroid dose guidelines stated in § 100.11. In this regulatory framework, the source term is assumed to be released immediately to the containment at the start of the postulated accident. The chemical form

of the radioiodine released to the containment atmosphere is assumed to be predominantly elemental, with the remainder being small fractions of particulate and organic iodine forms. Radiation doses are calculated at the exclusion area boundary (EAB) for the first 2-hours and at the low population zone (LPZ) for the assumed 30-day duration of the accident. The whole body dose comes primarily from the noble gases in the source term. The thyroid dose is based on inhalation of radioiodines. In analyses performed to date, the thyroid dose has generally been limiting. The design of some engineered safety features, such as containment spray systems and the charcoal filters in the containment, the building exhaust, and the control room ventilation systems, are predicated on these postulated thyroid doses. Subsequently, the NRC adopted the whole body and thyroid dose criteria in Criterion 19 of 10 CFR Part 50, Appendix A (36 FR 3255; February 20, 1971).

The source term in TID–14844 is representative of a major accident involving significant core damage and is typically postulated to occur in conjunction with a large loss-of-coolant accident (LOCA). Although the LOCA is typically the maximum credible accident, NRC experience in reviewing license applications has indicated the need to consider other accident sequences of lesser consequence but higher probability of occurrence. Some of these additional accident analyses may involve source terms that are a fraction of those specified in TID–14844. The DBAs were not intended to be actual event sequences, but rather, were intended to be surrogates to enable deterministic evaluation of the response of the plant engineered safety features. These accident analyses are intentionally conservative in order to address known uncertainties in accident progression, fission product transport, and atmospheric dispersion. Although probabilistic risk assessments (PRAs) can provide useful insights into system performance and suggest changes in how the desired defense in depth is achieved, defense in depth continues to be an effective way to account for uncertainties in equipment and human performance. The NRC's policy statement on the use of PRA methods (60 FR 42622; August 16, 1995) calls for the use of PRA technology in all regulatory matters in a manner that complements the NRC's deterministic approach and supports the traditional defense-in-depth philosophy.

Since the publication of TID–14844, significant advances have been made in understanding the timing, magnitude, and chemical form of fission product releases from severe nuclear power plant accidents. Many of these insights developed out of the major research efforts started by the NRC and the nuclear industry after the accident at Three Mile Island (TMI). In 1995, the NRC published NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants,'' which utilized this research to provide more physically based estimates of the accident source term that could be applied to the design of future light-water power reactors. The NRC sponsored significant review efforts by peer reviewers, foreign research partners, industry groups, and the general public (request for public comment was published in 57 FR 33374).

The information in NUREG–1465 presents a representative accident source term (''revised source term'') for a boiling-water reactor (BWR) and for a pressurized-water reactor (PWR). These revised source terms are described in terms of radionuclide composition and magnitude, physical and chemical form, and timing of release. Where TID–14844 addressed three categories of radionuclides, the revised source terms categorize the accident release into eight groups on the basis of similarity in chemical behavior. Where TID–14844 assumed an immediate release of the activity, the revised source terms have five release phases that are postulated to occur over several hours, with the onset of major core damage occurring after 30 minutes. Where TID–14844 assumed radioiodine to be predominantly elemental, the revised source terms assume radioiodine to be predominantly cesium iodide (CsI), an aerosol that is more amenable to mitigation mechanisms.

For DBAs, the NUREG–1465 source terms are comparable to the TID–14844 source term with regard to the magnitude of the noble gas and radioiodine release fractions. However, the revised source terms offer a more representative description of the radionuclide composition and release timing. The NRC has determined (SECY–94–302, dated December 1994) that design basis analyses will address the first three release phases—coolant, gap, and in-vessel. The ex-vessel and late in-vessel phases are considered to be unduly conservative for design basis analysis purposes. These latter releases could only result from core damage accidents with vessel failure and core-concrete interactions. The estimated frequencies of such scenarios are low enough that they need not be considered for the purpose of meeting the requirements of § 100.11 or, as proposed herein, § 50.67.

The objective of NUREG–1465 was to define revised accident source terms for regulatory application for future light water reactors. The NRC's intent was to capture the major relevant insights available from severe accident research to provide, for regulatory purposes, a more realistic portrayal of the amount of the postulated accident source term. These source terms were derived from examining a set of severe accident sequences for light water reactors (LWRs) of current design. Because of general similarities in plant and core design parameters, these results are considered to be applicable to evolutionary and passive LWR designs. The revised source term has been used in evaluating the Westinghouse AP–600 standard design certification application. (A draft version of NUREG–1465 was used in evaluating Combustion Engineering's (CE's) System 80+ design.)

The NRC considered the applicability of the revised source terms to operating reactors and determined that the current analytical approach based on the TID–14844 source term would continue to be adequate to protect public health and safety, and that operating reactors licensed under this approach would not be required to reanalyze accidents using the revised source terms. The NRC also concluded that some licensees may wish to use an alternative source term in analyses to support operational flexibility and cost-beneficial licensing actions. The NRC initiated several actions to provide a regulatory basis for operating reactors to voluntarily amend their facility design bases to enable use of the revised source term in design basis analyses. First, the NRC solicited ideas on how an alternative source term might be implemented. In November 1995, the Nuclear Energy Institute (NEI) submitted its generic framework, Electric Power Research Institute Technical Report TR–105909, ''Generic Framework for Application of Revised Accident Source Term to Operating Plants.'' This report and the NRC response were discussed in SECY–96–242 (November 1996). Second, the NRC initiated a comprehensive assessment of the overall impact of substituting the NUREG–1465 source terms for the traditionally used TID–14844 source term at three typical facilities. This was done to evaluate the issues involved with applying the revised source terms at operating plants. SECY 98–154 (June 1998) described the conclusions of this assessment. Third, the NRC accepted license amendment requests related to implementation of the revised source

terms at a small number of pilot plants. Experience has demonstrated that evaluation of a limited number of plant-specific submittals improves regulation and regulatory guidance development. The review of these pilot projects is currently in progress. Insights from these pilot plant reviews will be incorporated into the regulatory guidance that will be developed in conjunction with this rulemaking. Fourth, the NRC initiated an assessment on whether rulemaking would be necessary to allow operating reactors to use an alternative source term. The proposed rule and the supporting regulatory guidance that will be developed as part of this rulemaking have resulted from this assessment. The NRC plans to issue the supporting regulatory guidance for public comment on the same day as it publishes the final rule.

This proposed rulemaking for use of alternative source terms is applicable only to those facilities for which a construction permit was issued before January 10, 1997, under 10 CFR Part 50, ''Domestic Licensing of Production and Utilization Facilities.'' The regulations of this part are supplemented by those in other parts of Chapter I of Title 10, including Part 100, ''Reactor Site Criteria.'' Part 100 contains language that qualitatively defines a required accident source term and contains a note that discusses the availability of TID–14844. With the exception of § 50.34(f), there are no explicit requirements in Chapter I of Title 10 to use the TID–14844 accident source term. Section 50.34(f), which addresses additional TMI-related requirements, is only applicable to a limited number of construction permit applications pending on February 16, 1982, and to applications under Part 52.

An applicant for an operating license is required by § 50.34(b) to submit a final safety analysis report (FSAR) that describes the facility and its design bases and limits, and presents a safety analysis of the structures, systems, and components of the facility as a whole. Guidance in performing these analyses is given in regulatory guides. In its review of the more recent applications for operating licenses, the NRC has used the review procedures in NUREG-0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants'' (SRP). These review procedures reference or provide acceptable assumptions and analysis methods. The facility FSAR documents the assumptions and methods actually used by the applicant in the required safety analyses. The NRC's finding that a license may be issued is based on the review of the FSAR, as documented in the Commission's safety evaluation report (SER). By their inclusion in the FSAR, the assumptions (including the source term) become part of the design basis [1] of the facility. From a regulatory standpoint, the requirement to use the TID–14844 source term is expressed as a licensee commitment (typically to Regulatory Guide 1.3 or 1.4) documented in the facility FSAR, and is subject to the requirements of § 50.59.

In January 1997 (61 FR 65157), the NRC amended its regulations in 10 CFR Parts 21, 50, 52, 54, and 100. That regulatory action produced site criteria for future sites; presented a stable regulatory basis for seismic and geologic siting and the engineering design of future nuclear power plants to withstand seismic events; and relocated source term and dose requirements for future plants into part 50. Because these dose requirements tend to affect reactor design rather than siting, they are more appropriately located in Part 50. This decoupling of siting from design is consistent with the future licensing of facilities using standardized plan designs, the design features of which will be certified in a separate design certification rulemaking. This decoupling of siting from design was directed by Congress in the 1980 Authorization Act for the NRC. Because the revised criteria would not apply to operating reactors, the non-seismic and seismic reactor site criteria for operating reactors were retained as Subpart A and Appendix A to Part 100, respectively. The revised reactor site criteria were added as Subpart B in Part 100, and revised source term and dose requirements were moved to § 50.34. The existing source term and dose requirements of Subpart A of Part 100 will remain in place as the licensing bases for those operating reactors that do not elect to use an alternative source term.

In relocating the source term and dose requirements for future reactors to § 50.34, the NRC retained the requirements for the exclusion area and the low population zone, but revised the associated numerical dose criteria to replace the two different doses for the whole body and the thyroid gland with a single, total effective dose equivalent (TEDE) value. The dose criteria for the whole body and the thyroid, and the immediate 2-hour exposure period were largely predicated by the assumed source term being predominantly noble gases and radioiodines instantaneously released to the containment and the assumed ''single critical organ'' method of modeling the internal dose used at the time that Part 100 was originally published. However, the current dose criteria, by focusing on doses to the thyroid and the whole body, assume that the major contributor to doses will be radioiodine. Although this may be appropriate with the TID–14844 source term, as implemented by Regulatory Guides 1.3 and 1.4, it may not be true for a source term based on a more complete understanding of accident sequences and phenomenology.

The postulated chemical and physical form of radioiodine in the revised source terms is more amenable to mitigation and, as such, radioiodine may not always be the predominant radionuclide in an accident release. The revised source terms include a larger number of radionuclides than did the TID–14844 source term as implemented in regulatory guidance. The whole body and thyroid dose criteria ignore these contributors to dose. The NRC amended its radiation protection standards in Part 20 in 1991 (56 FR 23391; May 21, 1991) replacing the single, critical organ concept for assessing internal exposure with the TEDE concept that assesses the impact of all relevant nuclides upon all body organs. TEDE is defined to be the deep dose equivalent (for external exposure) plus the committed effective dose equivalent (for internal exposure). The deep dose equivalent (DDE) is comparable to the present whole body dose; the committed effective dose equivalent (CEDE) is the sum of the products of doses (integrated over a 50-year period) to selected body organs resulting from the intake of radioactive material multiplied by weighting factors for each organ that are representative of the radiation risk associated with the particular organ.

The TEDE, using a risk-consistent methodology, assesses the impact of all relevant nuclides upon all body organs. Although it is expected that in many cases the thyroid could still be the limiting organ and radioiodine the limiting radionuclide, this conclusion cannot be assured in all potential cases. The revised source terms postulate that the core inventory is released in a

[1] As defined in 10 CFR Part 50.2, design bases means that information which identifies the specific functions to be performed by a structure, system, or component of a facility, and the specific values or ranges of values chosen for controlling parameters as reference bounds for design. These values may be (1) restraints derived from generally accepted ''state of the art'' practices for achieving functional goals, or (2) requirements derived from analysis (based on calculation and/or experiments) of the effects of a postulated accident for which a structure, system, or component must meet its functional goals. The NRC considers the accident source term to be an integral part of the design basis because it sets forth specific values (or range of values) for controlling parameters that constitute reference bounds for design.

sequence of phases over 10 hours, with the more significant release commencing at about 30 minutes from the start of the event. The assumption that the 2-hour exposure period starts immediately at the onset of the release is inconsistent with the phased release postulated in the revised source terms. The proposed rule would extend the future LWR dose criteria to operating reactors that elect to use an alternative source term.

An accidental release of radioactivity can result in radiation exposure to control room operators. Normal ventilation systems may draw this activity into the control room where it can result in external and internal exposures. Control room designs differ but, in general, design features are provided to detect the accident or the activity and isolate the normal ventilation intake. Emergency ventilation systems are activated to minimize infiltration of contaminated air and to remove activity that has entered the control room. Personnel exposures can also result from radioactivity outside of the control room. However, because of concrete shielding of the control room, these latter exposures are generally not limiting. The objective of the control room design is to provide a location from which actions can be taken to operate the plant under normal conditions and to maintain it in a safe condition under accident conditions. General Design Criterion 19 (GDC–19), ''Control Room,'' of Appendix A to 10 CFR part 50 (36 FR 3255; February 20, 1971), establishes minimum requirements for the design of the control room, including a requirement for radiation protection features adequate to permit access to and occupancy of the control room under accident conditions. The GDC–19 criteria were established for judging the acceptability of the control room design for protecting control room operators under postulated design basis accidents, a significant concern being the potential increases in offsite doses that might result from the inability of control room personnel to adequately respond to the event.

The GDC–19 criteria are expressed in terms of whole body dose, or its equivalent to any organ. The NRC did not revise the criteria when Part 20 was amended (56 FR 23391) instead deferring such action to individual facility licensing actions (NUREG/CR–6204). This position was taken in the interest of maintaining the licensing basis for those facilities already licensed. The NRC is proposing to replace the current GDC–19 dose criteria for future reactors and for operating reactors that elect to use an alternative source term with a criterion expressed in terms of TEDE. The rationale for this revision is similar to the rationale, discussed earlier in this preamble, for revising the dose criteria for offsite exposures.

On January 10, 1997 (61 FR 65157), the NRC amended 10 CFR Parts 21, 50, 52, 54, and 100 of its regulations to update the criteria used in decisions regarding power reactor siting for future nuclear power plants. The NRC intended that future licensing applications in accordance with Part 52 utilize a source term consistent with the source term information in NUREG–1465 and the accident TEDE criteria in Parts 50 and 100. However, during the final design approval (FDA) and design certification proceeding for the Westinghouse AP–600 advanced light-water reactor design, the NRC staff and Westinghouse determined that exemptions were necessary from §§ 50.34(f)(2)(vii), (viii), (xxvi), and (xxviii) and 10 CFR Part 50, Appendix A, GDC–19. This rule would eliminate the need for these exemptions for future applicants under Part 52 by making conforming changes to Part 50, Appendix A, GDC–19 and § 50.34.

II. Objectives

The objectives of this proposed regulatory action are to—

1. Provide a regulatory framework for the voluntary implementation of alternative source terms as a change to the design basis at currently licensed power reactors, thereby enabling potential cost-beneficial licensing actions while continuing to maintain existing safety margins and defense in depth.

2. Retain the existing regulatory framework for currently licensed power reactor licensees who choose not to implement an alternative source term, but continue to comply with their existing source term.

3. Relocate source term and dose requirements that apply primarily to plant design into 10 CFR Part 50 for operating reactors that choose to implement an alternative source term, and

4. Implement conforming changes to § 50.34(f) and Part 50, Appendix A, GDC–19 to eliminate the need for exemptions for future applicants under Part 52.

III. Alternatives

The first alternative considered by the NRC was to continue using current regulations for accident dose criteria and control room dose criteria. This is not considered to be an acceptable alternative. As discussed in the statements of consideration for the final siting rule (61 FR 65157, 65159; December 11, 1996), the NRC determined that dose criteria expressed in terms of whole body and thyroid doses were inconsistent with the use of new source terms not based upon TID–14844. With regard to the exclusion area dose guideline, the NRC had previously determined (id. at 65160) that the dose criterion applies to the 2-hour period resulting in the maximum dose.

The second alternative considered by the NRC was the replacement of the existing guidelines in § 100.11 and the existing criteria in 10 CFR Part 50 Appendix A, GDC–19 with revised dose criteria. This is not considered to be a desirable alternative because the provisions of the existing regulations form part of the licensing bases for many of the operating reactors. Therefore, these provisions must remain in effect for operating reactors that do not implement an alternative source term. In addition, this alternative would also be inconsistent with the NRC's philosophy of separating plant siting criteria and dose requirements.

The approach of establishing the requirements for use of alternative source terms in a new section to Part 50 while retaining the existing regulations in Part 100 Subpart A and Part 50 Appendix A GDC–19 was chosen as the best alternative.

The NRC considered alternatives with regard to providing regulatory guidance to support the new section to Part 50. The first option was to issue no additional regulatory guidance. This option was not considered to be acceptable because in the absence of clear regulatory guidance, licensee efforts in preparing applications and the NRC staff review of submitted applications, could be hindered by differences in interpretations and technical positions. This could result in the inefficient use of licensee and NRC staff resources, could cause licensing delays, and lead to less uniform and less consistent regulatory implementation.

The second option was to replace the existing regulatory guides that address the radiological consequences of accidents with new revisions. This is not considered to be an acceptable choice because the provisions of the existing regulatory guides form part of the licensing bases for many of the operating reactors. Therefore, these provisions must remain in effect for those operating reactors that do not implement an alternative source term. The third option was to issue a new regulatory guide on the implementation

of alternative source terms that would include revised assumptions and acceptable analysis methods for each design basis accident in a series of appendices. The approach of issuing a new regulatory guide was determined to be the best option. To provide review guidance for the NRC staff, a new section on design basis radiological analyses using alternative source terms would be added to the Standard Review Plan.

IV. Section-by-Section Analysis

A. Section 50.2

The general ''definitions'' section for Part 50 would be supplemented by adding a definition of source term for the purpose of § 50.67. In NUREG–1465, the *source term* is defined by five projected characteristics: (1) Magnitude of radioactivity release, (2) radionuclides released, (3) physical form of the radionuclides released, (4) chemical form of the radionuclides released, and (5) timing of the radioactivity release. Although all five characteristics should be addressed in applications proposing the use of an alternative source term, there may be technically justifiable applications in which all five characteristics need not be addressed. The NRC intends to allow licensees flexibility in implementing alternative source terms consistent with maintaining a conservative, clear, logical, and consistent plant design basis. The regulatory guide that supports this proposed rule will contain guidance on an acceptable basis for defining the characteristics of an alternative source term.

B. Section 50.67(a)

This paragraph would define the licensees that may seek to revise their current radiological source term with an alternative source term. The proposed rule is applicable only to holders of nuclear power plant operating licenses that were issued under 10 CFR Part 50 before January 10, 1997. The proposed rule would not require licensees to revise their current source term. The NRC considered the acceptability of the TID–14844 source term at current operating reactors and determined that the analytical approach based on the TID–14844 source term would continue to be adequate to protect public health and safety, and that operating reactors licensed under this approach should not be required to reanalyze design basis accidents using a new source term. The proposed rule does not explicitly define an alternative source term. In lieu of an explicit reference to NUREG–1465, Footnote 1 to the proposed rule identifies the significant characteristics of an accident source term. The regulatory guide that will be issued to support this proposed rule will identify the NUREG–1465 source terms as acceptable alternatives to the source term in TID–14844, and will provide implementation guidance. This approach would provide for future revised source terms if they are developed and would allow licensees to propose additional alternatives for NRC consideration.

C. Section 50.67(b)(1)

This paragraph of § 50.67 would state the information that a licensee must submit as part of a license amendment application to use an alternative source term. Because of the extensive use of the accident source term in the design and operation of a power reactor and the potential impact on postulated accident consequences and margins of safety of a change of such a fundamental design assumption, the NRC has determined that any change to the design basis to use an alternative source term should be reviewed and approved by the NRC in the form of a license amendment. Changes to the source term, by itself, would ordinarily constitute a no significant hazards consideration. In addition, generic analyses performed by the NRC staff in support of this proposed rule have indicated that there are potential changes to the facility as documented in the FSAR which would constitute a no significant hazards consideration. However, such determinations would have to be made for each proposed change based upon facility-specific evaluations. The procedural requirements for processing a license amendment are given in §§ 50.90 through 50.92.

The NRC's regulations provide a regulatory mechanism for a licensee to effect a change in its design basis in § 50.59. That section allows a licensee to make changes to the facility as described in the final safety evaluation report (FSAR) without prior NRC approval, unless the proposed change is deemed to involve an unreviewed safety question (USQ), or involves a change to the technical specifications incorporated into the facility license. If a USQ is determined to exist or if a change to the technical specifications is involved, the licensee must request NRC approval of the change using the license amendment process detailed in § 50.90. The criteria for determining that a USQ is involved appear in § 50.59. Significant to this proposed rule is the criterion that a USQ would exist if the proposed change resulted in an increase in consequences of an accident or malfunction. In many applications, alternative source terms may reduce the postulated consequences of the accident or malfunction. For this reason, the NRC determined that the regulatory framework of § 50.59 does not provide assurance that this change in the design basis would be recognized by the licensee as needing review by the NRC staff. After a licensee has been authorized to substitute an alternative source term in its design basis, subsequent changes to the facility that involve an alternative source term may be processed under § 50.59 or § 50.90, as appropriate. However, a subsequent change to the source term itself could not be implemented under § 50.59; in all cases a change to the source term must be made through a license amendment.

The proposed rule would require the applicant to perform analyses of the consequences of applicable design basis accidents previously analyzed in the safety analysis report and to submit a description of the analysis inputs, assumptions, methodology, and results of these analyses for NRC review. Applicable evaluations may include, but are not limited to, those previously performed to show compliance with § 100.11, § 50.49, Part 50 Appendix A GDC–19, § 50.34(f), and NUREG–0737 requirements II.B.2, II.B.3, III.D.3.4. The regulatory guide that supports this proposed rule will provide guidance on the scope and extent of analyses used to show compliance with this rule and on the assumptions and methods used therein. It is not the NRC's intent that all of the design basis radiological analyses for a facility be performed again as a prerequisite for approval of the use of an alternative source term. The NRC does expect that the applicant will perform sufficient evaluations, supported by calculations as warranted, to demonstrate the acceptability of the proposed amendment.

D. Sections 50.67(b)(2)(i), (ii), (iii)

These subparagraphs would contain the three criteria for NRC approval of the license amendment to use an alternative source term. A detailed rationale for the use of 0.25 Sv (25 rem) TEDE as an accident dose criterion and the use of the 2-hour exposure period resulting in the maximum dose for future LWRs is provided at 61 FR 65157; December 11, 1996. The same considerations that formed the basis for that rationale are similarly applicable to operating reactors that elect to use an alternative source term. The NRC believes that it is technically appropriate and logical to extend the philosophy of decoupling of design and siting, and the dose criteria established

for future LWRs to operating reactors that elect to use an alternative source term.

The NRC is proposing to replace the current GDC–19 dose criteria for operating reactors that elect to use an alternative source term with a criterion of 0.05 Sv (5 rem) TEDE for the duration of the accident. This criterion would be included in § 50.67 rather than GDC–19 in order to co-locate all of the dose requirements associated with alternative source terms. The bases for the NRC's decision are: first, that the criteria in GDC–19 and that in the proposed rule are based on a primary occupational exposure limit. Second, the language in GDC–19: ''5 rem whole body, or its equivalent to any part of the body'' is subsumed by the definition of TEDE in § 20.1003 and by the 0.05 Sv (5 rem) TEDE annual limit in § 20.1201(a). Although the weighting factors stated in § 20.1003 for use in determining TEDE differ in magnitude from the weighting factors implied in the 0.3 Sv (30 rem) thyroid criteria used for showing compliance with GDC–19, these differences are the result of improvement in the science of assessing internal exposures and do not represent a reduction in the level of protection. Third, as discussed earlier, the use of TEDE in conjunction with alternative source terms has been deemed appropriate and necessary. Fourth, the use of TEDE for the control room dose criterion is consistent with the use of TEDE in the accident dose criteria for offsite exposure.

The NRC is not including a ''capping'' limitation, an additional requirement that the dose to any individual organ not be in excess of some fraction of the total as provided for routine occupational exposures. The bases for the NRC's decision are: first, that this non-inclusion of a ''capping'' limitation is consistent with the final rule published in December 11, 1996 (61 FR 65157), with regard to doses to persons offsite. Second, the use of 0.05 Sv (5 rem) TEDE as the control room criterion does not imply that this would be an acceptable exposure during emergency conditions, or that other radiation protection standards of Part 20, including individual organ dose limits, might not apply. This criterion is provided only to assess the acceptability of design provisions for protecting control room operators under postulated DBA conditions. The DBA conditions assumed in these analyses, although credible, generally do not represent actual accident sequences but are specified as conservative surrogates to create bounding conditions for assessing the acceptability of engineered safety features. Third, § 20.1206 permits a once-in-a-lifetime planned special dose of five times the annual dose limits. Also, Environmental Protection Agency (EPA) guidance sets a limit of five times the annual dose limits for workers performing emergency services such as lifesaving or protection of large populations. Considering the individual organ weighting factors of § 20.1003 and assuming that only the exposure from a single organ contributed to TEDE, the organ dose, although exceeding the dose specified in § 20.1201(a), would be less than that considered acceptable as a planned special dose or as an emergency worker dose. The NRC is not suggesting that control room dose during an accident can be treated as a planned special exposure or that the EPA emergency worker dose limits are an alternative to GDC–19 or the proposed rule. However, the NRC does believe that these provisions offer a useful perspective that supports the conclusion that the organ doses implied by the proposed 0.05 Sv (5 rem) criterion can be considered to be acceptable due to the relatively low probability of the events that could result in doses of this magnitude.

Although the dose criteria in the proposed rule would supersede the dose criteria in GDC–19, the other provisions of GDC–19 remain applicable.

E. 10 CFR Part 50, Appendix A, GDC–19

GDC–19 would be changed to include the TEDE dose criterion for control room design for applicants for construction permits, design certifications, and combined operating licenses that submitted applications after January 10, 1997 (the effective date of the 1996 rulemaking adopting the TEDE criterion), and for those licenses using an alternative source term under § 50.67. The proposed change to GDC–19 addresses the use of alternative source terms at operating reactors and a deficiency identified in the regulatory framework for early site permits, standard design certifications, and combined licenses under part 52. Sections 52.18, 52.48, and 52.81 establish that applications filed under part 52, Subparts A, B, and C, respectively, will be reviewed according to the standards given in 10 CFR parts 20, 50, 51, 55, 73, and 100 to the extent that those standards are technically relevant to the proposed design. Therefore, GDC–19 is pertinent to applications under part 52. The final rule that became effective on January 10, 1997 (61 FR 65157; December 11, 1996), established accident TEDE criteria (in § 50.34) for applicants under part 52 but did not change the existing control room whole body (or equivalent) dose criterion in GDC–19. Thus, exemptions from the dose criteria in the current GDC–19 were necessary in the design certification process for the Westinghouse AP–600 advanced LWR in order to use the 0.05 Sv (5 rem) TEDE criterion deemed necessary for use with alternative source terms. Exemptions would arguably be necessary for future applicants for construction permits, design certifications, and combined operating licenses. This proposed change would eliminate the need for these exemptions.

F. Sections 21.3, 50.2, 50.49(b)(1)(i)(C), 50.65(b)(1), and 54.4(a)(1)(iii)

These sections would be revised to conform with the relocation of accident dose criteria from § 100.11 to § 50.67 for operating reactors that have amended their design bases to use an alternative source term.

G. Section 50.34

A new footnote to § 50.34 would be added to define what constitutes an accident source term. This new footnote is identical to the existing footnote 1 to § 100.11, and is being added to provide for consistency between Parts 50 and 100.

H. Sections 50.34(f)(2)(vii), (viii), (xxvi) and (xxviii)

These paragraphs would be revised to replace an explicit reference to the ''TID–14844 source term'' with a more general reference to ''accident source term.'' These changes potentially affect two classes of applicants. The first affected class is facilities that obtain combined licenses under part 52. Section 52.47(a)(ii) states that applications for combined licenses must contain, inter alia, ''demonstration of compliance with any technically-relevant portions of the Three Mile Island requirements set forth in § 50.34(f).'' Section 50.34(f) contains several references to the TID–14844 source term. These references would be modified to delete the reference to TID–14844. This would make it clear that applicants for combined licenses would not use the TID–14844 source term but would use the source term in the referenced design certification, or a source term that is justified in the combined license application.

The second affected class is the small subset of plants that had construction permits pending on February 16, 1982. With the proposed change, these plants could use either the TID–14844 source term or an alternative source term in their operating license applications.

V. Future Regulatory Action

The NRC is developing the following regulatory guides and Standard Review Plan sections to provide prospective applicants with the necessary guidance for implementing the proposed regulation. The draft guide and draft Standard Review Plan section will be issued to coincide with the publication of the final regulations that would implement this proposed rulemaking. A notice of availability for these materials will be published in the **Federal Register** at a future date.

1. Draft Guide DG–1081, ''Alternative Radiological Source Terms for Evaluating the Radiological Consequences of Design Basis Accidents at Boiling and Pressurized Water Reactors''

This guide is expected to present regulatory guidance on the implementation of an alternative source term at an operating reactor. The guide is expected to address issues involving limited or selective implementation of an alternative source term and probabilistic risk assessment (PRA) issues related to plant modifications based on an alternative source term, and to provide guidance on the scope and extent of affected DBA radiological analyses and associated acceptance criteria. The guide is expected to include revised assumptions and methods for each affected DBA in a series of appendices. These appendices will supersede the guidance in Regulatory Guides 1.3, 1.4, 1.25, and 1.77, and will supplement guidance in Regulatory Guide 1.89 for those facilities using an alternative source term.

2. Standard Review Plan Section, 15.0.1, ''Radiological Consequence Analyses Using Alternative Source Terms''

This SRP section presents guidance to NRC staff in the review of the adequacy of licensee submittals requesting approval for use of an alternative source term.

VI. Referenced Documents

Copies of NUREG–0737, NUREG–0800, NUREG–1465, and NUREG/CR–6204 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328. Copies also are available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161. A copy also is available for inspection and copying for a fee in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

Copies of issued regulatory guides may be purchased from the Government Printing Office (GPO) at the current GPO price. Information on current GPO prices may be obtained by contacting the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Issued guides also may be purchased from the National Technical Information Service (NTIS) on a standing order basis. Details on this service may be obtained by writing NTIS, 5826 Port Royal Road, Springfield, VA 22161.

Copies of SECY–94–302, SECY–96–242, SECY–98–154, TID14844, and TR–105909 are available for inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

VII. Draft Finding of No Significant Environmental Impact: Availability

The NRC has determined under the National Environmental Policy Act of 1969, as amended, and the NRC's regulations in Subpart A of 10 CFR Part 51, that this regulation is not a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This proposed rule would allow operating reactors to replace the traditional TID–14844 source term with a more realistic source term based on the insights gained from extensive accident research activities. The actual accident sequence and progression would not be changed; it is the regulatory assumptions regarding the accident that would be affected by the change. The use of an alternative source term alone cannot increase the core damage frequency (CDF) or the large early release frequency (LERF) or actual offsite or onsite radiation doses. An alternative source term could be used to justify changes in the plant design that might have an impact on CDF or LERF or that might increase offsite or onsite doses. These potential changes are subject to existing requirements in the NRC's regulations. Thus, the level of protection of public health and safety provided in NRC regulations would not be decreased by this proposed rule. The proposed rule would not affect non-radiological plant effluents and would have no significant environmental impact.

As discussed above, the determination of the environmental assessment is that there would be no significant offsite impact on the public from this action. However, the general public should note that the NRC welcomes public participation. Also, the NRC has committed itself to complying in all its actions with Executive Order (E.O.) 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994. In accordance with that Executive Order, the NRC has determined that there are no disproportionately high and adverse impacts on minority and low income parties. In the letter and spirit of E.O. 12898, the NRC is requesting public comments on any environmental justice considerations or questions that the public thinks may be related to this proposed rule, but that somehow were not addressed. The NRC uses the following working definition of environmental justice: Environmental justice means the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, culture, income, or educational level with respect to the development, implementation and enforcement of environmental laws, regulations, and policies. Comments on any aspect of the environmental assessment, including environmental justice, may be submitted to the NRC as indicated under the **ADDRESSES** heading.

The draft environmental assessment and the draft finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory NRC, Washington, DC 20555–0001, telephone: 301–415–1081, or by Internet electronic mail to sfl@nrc.gov.

VIII. Paperwork Reduction Act Statement

This proposed rule increases the burden on licensees by requiring that when seeking to revise their current accident source term in design basis radiological consequence analyses, they apply for an amendment under § 50.90. The public burden for this information collection is estimated to average 609 hours per request. Because the burden for this information collection is insignificant, Office of Management and Budget (OMB) clearance is not required. Existing requirements were approved by the Office of Management and Budget, approval number 3150-0011.

Public Protection Notification

If an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

IX. Regulatory Analysis

The Commission has prepared a regulatory analysis on this regulation. Interested persons may examine a copy of the regulatory analysis at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis are available from Mr. Stephen F. LaVie, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1081, or by Internet electronic mail to sfl@nrc.gov.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this regulation will not have a significant economic impact on a substantial number of small entities. This proposed regulation will affect only the licensing and operation of nuclear power plants. The companies that own these plants do not fall within the definition of ''small entities'' found in the Regulatory Flexibility Act or within the size standards established by the NRC (April 11, 1995; 60 FR 18344).

XI. Backfit Analysis

The NRC has determined that the backfit rule in 10 CFR 50.109, does not apply to this proposed regulation and that a backfit analysis is not required for this proposed regulation because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1). This proposed regulation amends the NRC's regulations by establishing alternate requirements that may be voluntarily adopted by licensees.

List of Subjects

10 CFR Part 21

Nuclear power plants and reactors, Penalties, Radiation protection, Reporting and recordkeeping requirements.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 54

Administrative practice and procedure, Age-related degradation, Backfitting, Classified information, Criminal penalties, Environmental protection, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons noted in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553, the NRC is proposing the following amendments to 10 CFR Parts 21, 50, and 54:

PART 21—REPORTING OF DEFECTS AND NONCOMPLIANCE

1. The authority citation for part 21 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 234, 83 Stat. 444, as amended, sec. 1701, 106 Stat. 2951, 2953 (42 U.S.C. 2201, 2282, 2297f); secs. 201, as amended, 206, 88 Stat. 1242, as amended, 1246 (42 U.S.C. 5841, 5846).

Section 21.2 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

2. Section 21.3 is amended by republishing the introductory text and revising paragraph (1)(i)(C) of the definition of *Basic component* to read as follows:

§ 21.3 Definitions.

As used in this part:

Basic component. (1)(i) * * *

(C) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

3. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–9601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–9190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd), and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Sections 50.33a, 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–9190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–9415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C 2237).

4. Section 50.2 is amended by republishing the introductory text, by revising paragraph (1)(iii) of the definition of *Basic component* and by adding in alphabetical order the definition for *Source term* to read as follows:

§ 50.2 Definitions.

As used in this part,

* * * * *

Basic component * * *

(1) * * *

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

Source term refers to the magnitude and mix of radionuclides released from the reactor core to the reactor containment, their physical and chemical form, and the timing of their release.

* * * * *

5. Section 50.34 is amended by revising paragraphs (f)(2)(vii), (viii), (xxvi), and (xxviii) to read as follows:

§ 50.34 Contents of applications; technical information.

* * * * *

(f) * * *

(2) * * *

(vii) Perform radiation and shielding design reviews of spaces around systems that may, as a result of an accident, contain accident source term [11] radioactive materials, and design as necessary to permit adequate access to important areas and to protect safety equipment from the radiation environment. (II.B.2)

(viii) Provide a capability to promptly obtain and analyze samples from the reactor coolant system and containment that may contain accident source term [12] radioactive materials without radiation exposures to any individual exceeding 5 rems to the whole body or 50 rems to

[11] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of site analysis or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

[12] See footnote 11 to paragraph (f)(2)(vii) of this section.

the extremities. Materials to be analyzed and quantified include certain radionuclides that are indicators of the degree of core damage (e.g., noble gases, radioiodines and cesiums, and nonvolatile isotopes), hydrogen in the containment atmosphere, dissolved gases, chloride, and boron concentrations. (II.B.3)

* * * * *

(xxvi) Provide for leakage control and detection in the design of systems outside containment that contain (or might contain) accident source term [13] radioactive materials following an accident. Applicants shall submit a leakage control program, including an initial test program, a schedule for re-testing these systems, and the actions to be taken for minimizing leakage from such systems. The goal is to minimize potential exposures to workers and public, and to provide reasonable assurance that excessive leakage will not prevent the use of systems needed in an emergency. (III.D.1.1)

* * * * *

(xxviii) Evaluate potential pathways for radioactivity and radiation that may lead to control room habitability problems under accident conditions resulting in an accident source term [14] release, and make necessary design provisions to preclude such problems. (III.D.3.4)

6. Section 50.49 is amended by revising paragraph (b)(1)(i)(C) to read as follows:

§ 50.49 Environmental qualification of electric equipment important to safety for nuclear power plants.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(C) The capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposures comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

7. Section 50.65 is amended by revising paragraph (b)(1) to read as follows:

§ 50.65 Requirements for monitoring the effectiveness of maintenance at nuclear power plants.

* * * * *

(b) * * *

(1) Safety-related structures, systems and components that are relied upon to remain functional during and following design basis events to ensure the integrity of the reactor coolant pressure boundary, the capability to shut down the reactor and maintain it in a safe shutdown condition, or the capability to prevent or mitigate the consequences of accidents that could result in potential offsite exposure comparable to the guidelines in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

8. Part 50 is amended by adding § 50.67 to read as follows:

§ 50.67 Accident source term.

(a) *Applicability.* The requirements of this section apply to all holders of operating licenses issued prior to January 10, 1997, who seek to revise the current accident source term used in their design basis radiological analyses.

(b) *Requirements.* (1) A licensee who seeks to revise its current accident source term in design basis radiological consequence analyses shall apply for a license amendment under § 50.90. The application shall contain an evaluation of the consequences of applicable design basis accidents [1] previously analyzed in the safety analysis report.

(2) The NRC may issue the amendment only if the applicant's analysis demonstrates with reasonable assurance that:

(i) An individual located at any point on the boundary of the exclusion area for any 2-hour period following the onset of the postulated fission product release, would not receive a radiation dose in excess of 0.25 Sv (25 rem) [2] total effective dose equivalent (TEDE).

(ii) An individual located at any point on the outer boundary of the low population zone, who is exposed to the radioactive cloud resulting from the postulated fission product release (during the entire period of its passage), would not receive a radiation dose in excess of 0.25 Sv (25 rem) total effective dose equivalent (TEDE).

(iii) Adequate radiation protection is provided to permit access to and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 0.05 Sv (5 rem) total effective dose equivalent (TEDE) for the duration of the accident.

9. Part 50, Appendix A, II., General Design Criterion 19, is revised to read as follows:

Appendix A to Part 50—General Design Criteria for Nuclear Power Plants

* * * * *

II. * * *

Criterion 19—Control room. A control room shall be provided from which actions can be taken to operate the nuclear power unit safely under normal conditions and to maintain it in a safe condition under accident conditions, including loss-of-coolant accidents. Adequate radiation protection shall be provided to permit access and occupancy of the control room under accident conditions without personnel receiving radiation exposures in excess of 5 rem whole body, or its equivalent to any part of the body, for the duration of the accident.

Equipment at appropriate locations outside the control room shall be provided (1) with a design capability for prompt hot shutdown of the reactor, including necessary instrumentation and controls to maintain the unit in a safe condition during hot shutdown, and (2) with a potential capability for subsequent cold shutdown of the reactor through the use of suitable procedures.

Applicants for construction permits under this part or a design certification or combined license under part 52 of this chapter who apply on or after January 10, 1997, or holders of operating licenses using an alternative source term under § 50.67, shall meet the requirements of this criterion, except that with regard to control room access and occupancy, adequate radiation protection shall be provided to ensure that radiation exposures shall not exceed 0.05 Sv (5 rem) total effective dose equivalent (TEDE) as defined in § 50.2 for the duration of the accident.

* * * * *

PART 54—REQUIREMENTS FOR RENEWAL OF OPERATING LICENSES FOR NUCLEAR POWER PLANTS

10. The authority citation for part 54 continues to read as follows:

Authority: Secs. 102, 103, 104, 161, 181, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs 201, 202, 206, 88 Stat. 1242, 1244, as amended (42 U.S.C. 5841, 5842), E.O. 12829, 3 CFR, 1993 Comp., p. 570; E.O. 12958, as amended, 3 CFR, 1995 Comp., p. 333; E.O. 12968, 3 CFR, 1995 Comp., p. 391.

11. Section 54.4 is amended by revising paragraph (a)(1)(iii) to read as follows:

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[13] See footnote 11 to paragraph (f)(2)(vii) of this section.

[14] See footnote 11 to paragraph (f)(2)(vii) of this section.

[1] The fission product release assumed for these calculations should be based upon a major accident, hypothesized for purposes of design analyses or postulated from considerations of possible accidental events, that would result in potential hazards not exceeded by those from any accident considered credible. Such accidents have generally been assumed to result in substantial meltdown of the core with subsequent release of appreciable quantities of fission products.

[2] The use of 0.25 Sv (25 rem) TEDE is not intended to imply that this value constitutes an acceptable limit for emergency doses to the public under accident conditions. Rather, this 0.25 Sv (25 rem) TEDE value has been stated in this section as a reference value, which can be used in the evaluation of proposed design basis changes with respect to potential reactor accidents of exceedingly low probability of occurrence and low risk of public exposure to radiation.

§ 54.4 Scope.

(a) * * *

(1) * * *

(iii) The capability to prevent or mitigate the consequences of accidents which could result in potential offsite exposures comparable to those referred to in § 50.34(a)(1), § 50.67(b)(2), or § 100.11 of this chapter, as applicable.

* * * * *

Dated at Rockville, Maryland, this 5th day of March 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–6058 Filed 3–10–99; 8:45 am]

BILLING CODE 7590–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–02]

Proposed Revision of Class E Airspace; Colstrip, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This proposal would amend the Colstrip, MT, Class E area and provide additional controlled airspace to accommodate the development of new Standard Instrument Approach Procedures (SIAP) utilizing the Global Positioning System (GPS) at the Colstrip, Airport.

DATES: Comments must be received on or before April 26, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–02, 1601 Lind Avenue SW, Renton, Washington, 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–02, 1601 Lind Avenue SW, Renton, Washington 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specially invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 99–ANM–02.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed in a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Colstrip, MT, in order to accommodate two new GPS SIAP to the Colstrip Airport. This amendment would provide additional airspace by lowering the Class E area to the west in order to meet current criteria standards associated with SIAP holding patterns. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Constrip Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published Paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Colstrip, MT [Revised]

Colstrip Airport, Colstrip MT
(Lat. 45°51′10″ N, long. 106°42′34″ W)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Colstrip Airport, that airspace extending upward from 1,200 feet above the surface bounded on the north along V–2, on the east along V–254; on the south along lat. 45°30′00″ N., to long. 107°40′00″ W., on the west along long. 107°40′00″ W., to V–2; excluding that airspace within Federal airways, the Billings, the Forsyth and the Miles City, MT, Class E airspace areas

* * * * *

Issued in Seattle, Washington, on February 18, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–6054 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–41142; File No. S7–8–99]

RIN 3235–AH61

Operational Capability Requirements of Registered Broker-Dealers and Transfer Agents and Year 2000 Compliance

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Securities and Exchange Commission (''Commission) is soliciting comment on new proposed Rules 15b7–2 and 17Ad–20 and temporary Rules 15b7–3T, 17Ad–21T, and 17a–9T under the Securities Exchange Act of 1934 (''Exchange Act''). Broker-dealers and transfer agents are becoming increasingly reliant on computer systems to perform their functions. Thus, it is critical that they have sufficient operational capability. In addition, broker-dealers, transfer agents, and other securities market participants are facing a critical test of their operational capability with the upcoming Year 2000. These proposed rules would require registered broker-dealers and transfer agents to have sufficient operational capability and their computer systems to be Year 2000 compliant. These proposed rules are intended to protect investors and the securities markets by reducing the potential systemic risk as a result of operational failures in general, and in particular, computer systems failures related to the Year 2000 at registered broker-dealers and non-bank transfer agents.

DATES: You should send us your comments so that they arrive at the Commission on or before April 12, 1999.

ADDRESSES: You should submit three copies of your comments to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. You can also submit your comments electronically at the following E-mail address: rule-comments@sec.gov. In your comment letters, you should refer to File No. S7–8–99, which should be included on the subject line if E-mail is used. We will make all comments received available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549. We will post electronically submitted comment letters on our Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: *Broker-Dealers (Rules 15b7–2 and 15b7–3T)* Sheila Slevin, Assistant Director, 202–942–0796, S. Kevin An, Special Counsel, 202–942–0198, or Kevin Ehrlich, Attorney, 202–942–0778; *Transfer Agents (Rules 17Ad–20 and 17Ad–21T)* Jerry W. Carpenter, Assistant Director, 202–942–4187, or Lori R. Bucci, Special Counsel, 202–942–4187; *Recordkeeping (Rule 17a–9T)* Tom McGowan, Assistant Director, 202–942–0177, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction and Executive Summary

Because of the tremendous growth in the volume and complexity of securities trading in recent years, broker-dealers and transfer agents are becoming increasingly reliant on computer systems to perform their functions. Securities firms rely on computers to handle every aspect of trading, from routing orders to various markets to maintaining customer accounts. As with broker-dealers, the majority of transfer agents also now rely on computers instead of manual processing to record changes of ownership of securities, maintain issuer securityholder records, cancel and issue certificates, and distribute dividends. Accordingly, it has become more essential than ever that broker-dealers have sufficient operational capability to process transactions for customers as well as to maintain control of customer funds and securities, and for transfer agents to assure the prompt transfer and processing of securities and maintenance of securityholder files.

This obligation is not new. Broker-dealers and transfer agents have always been expected under the federal securities laws to have the ability to properly handle customer transactions, whether manually or electronically. For example, in connection with the back office problems in the 1960s, we warned broker-dealers that if they did not have the personnel and facilities to enable them to promptly execute and consummate all of their securities transactions, they could be in violation of the antifraud provisions if they accepted or executed any customer order.[1] More recently, the Division of Market Regulation stated that broker-dealers should take steps to prevent their operational systems from being overwhelmed by high trading volume and that they should have the systems capacity to handle exceptional situations.[2]

In light of broker-dealers' and transfer agents' increasing reliance on computer systems, we believe it is appropriate to provide further guidance by setting objective standards relating to operational capability that registered broker-dealers must meet under Section 15(b)(7) of the Exchange Act[3] and that registered transfer agents must meet under Section 17A(d)(1) of the Exchange

[1] Exchange Act Rel. No. 8363 (July 29, 1968), 33 FR 11150 (August 7, 1968).

[2] Staff Legal Bulletin No. 8 (September 9, 1998), which can be found at <http://www.sec.gov/rules/othern/slbmr8.htm>. At the time we announced the Automation Review Policy Statement for self-regulatory organizations (''SROs), we stated that broker-dealers should also engage in systems testing. Exchange Act Rel. No. 27445 (November 16, 1989), 54 FR 48703 (November 24, 1989).

[3] The Congress recognized the importance of the operational capability of broker-dealers by including Exchange Act Section 15(b)(7) as part of the 1975 Amendments. Pub. L. No. 94–29, 89 Stat. 97 (1975). That section allows us to establish by rule such operational capability standards as we find necessary or appropriate in the public interest or for the protection of investors. We also note that we have broad authority to promulgate rules and regulations as necessary or appropriate in the public interest or for the protection of investors to provide safeguards with respect to the financial responsibility and related practices of broker-dealers. Exchange Act Section 15(c)(3), 15 U.S.C. 8o(c)(3).

Act.[4] We are proposing these standards at this time because broker-dealers, transfer agents, and other securities market participants are facing a critical test of their operational capability with the upcoming Year 2000 (''Y2K'').[5] As the next millennium approaches, unless proper modifications have been made, the program logic in many computer systems will start to produce erroneous results because the systems will incorrectly read dates such as ''01/01/00'' as being in 1900 or in some other incorrect year. While we do not anticipate widespread failures by broker-dealers or transfer agents as a result of the Y2K problem, we want to reduce the potential risk to the markets by reserving the right to take prophylactic measures against broker-dealers and non-bank transfer agents whose systems will not be ready for Year 2000. Accordingly, we are also proposing temporary rules to specifically address the Year 2000 problem by giving us the ability to take the steps necessary in the event that a broker-dealer or a non-bank transfer agent will not be Year 2000 compliant.

II. Our Efforts to Date on the Y2K Problem

The Commission views the Y2K problem as an extremely serious issue and has already taken various steps to address it. For example, we adopted Rules 17a–5(e)(5) and 17Ad–18 under the Exchange Act requiring certain broker-dealers and non-bank transfer agents to file reports with us and their DEAs regarding their Year 2000 preparedness.[6] We also provided interpretive guidance for public companies, investment advisers, investment companies, and municipal securities issuers regarding their disclosure obligations about their Year 2000 issues.[7] Since 1996, our Division of Market Regulation has periodically surveyed the exchanges, Nasdaq, and the clearing agencies for detailed information regarding their Year 2000 efforts. In addition, since the third quarter of 1996, our Office of Compliance Inspections and Examinations has included a Year 2000 examination module in its examinations of transfer agents and selected broker-dealers.[8] Finally, we instituted public administrative and cease-and-desist proceedings against broker-dealers and transfer agents that failed to file in a timely manner all or part of the required Y2K forms.[9] Through these efforts, we have made clear that a failure to adequately address the Y2K problem cannot serve as an excuse for failing to protect investors.

To date, our efforts have mostly focused on increasing broker-dealer and transfer agent awareness of the Year 2000 problem, on requiring broker-dealers and non-bank transfer agents to disclose their Year 2000 readiness, and encouraging point-to-point and industry-wide testing.[10] Based on the experience and information obtained from these efforts, we have determined that it would be prudent to adopt additional safeguards to prevent or reduce any adverse effects of non-Year 2000 compliant broker-dealers and non-bank transfer agents on investors and the securities markets. It is crucial that all broker-dealers and transfer agents be Year 2000 compliant because the problems of any non-compliant broker-dealer or transfer agent could have detrimental and potentially widespread consequences for other market participants. For this reason, we have decided to propose measures that would allow us to take a proactive approach in dealing with broker-dealers and non-bank transfer agents that are not ready for Y2K.

III. Discussion of Proposed Rules

A. Proposed Rule 15b7–2

Proposed Rule 15b7–2 is intended to protect investors and the securities markets in general by requiring registered broker-dealers to have sufficient operational capability in order to conduct a securities business.[11] Under the proposed rule, registered broker-dealers must have and maintain operational capability, taking into consideration the nature of their business, to assure the prompt and accurate entry of customer orders, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities.[12] We are proposing this rule under Exchange Act Section 15(b)(7), which allows us to establish by rule such standards of operational capability as we find necessary or appropriate in the public interest or for the protection of investors.[13]

Broker-dealers have always been required to properly handle customer orders. If a broker-dealer fails to comply with this requirement, we can bring enforcement actions for, among other things, violating the antifraud provisions of the Exchange Act and/or

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[4] Exchange Act Section 17A(d)(1) gives us broad authority to prescribe rules for registered transfer agent activity as necessary or appropriate in the public interest, for the protection of investors, or for the safeguarding of securities and funds.

[5] *See generally* Exchange Act Rel. No. 40162 (July 2, 1998), 63 FR 37668 (July 13, 1998); Exchange Act Rel. No. 40163 (July 2, 1998), 63 FR 37688 (July 13, 1998).

[6] *Id.* In addition, we later amended Rule 17a–5 and Rule 17Ad–18 to require these entities to file a report prepared by an independent public accountant regarding their process for preparing for the Year 2000. Exchange Act Rel. No. 40608 (October 28, 1998), 63 FR 59208 (November 3, 1998); Exchange Act Rel. No. 40587 (October 22, 1998), 63 FR 58630 (November 2, 1998).

[7] Exchange Act Rel. No. 40277 (July 29, 1998), 63 FR 41394 (August 4, 1998). We subsequently issued a release publishing guidance in the form of Frequently Asked Questions to clarify recurring issues regarding Year 2000 disclosure obligations. Exchange Act Rel. No. 40649 (November 9, 1998), 63 FR 63758 (November 16, 1998).

[8] In addition, in June 1997 and 1998, our staff published reports to Congress on the *Readiness of the United States Securities Industry and Public Companies to Meet the Information Processing Challenges of the Year 2000*. Both of these reports are available at <http://www.sec.gov/news/studies/yr2000.htm> (and yr2000-2.htm). Our staff will prepare a similar report in 1999.

[9] *See, e.g.*, Exchange Act Release No. 40573 [Adm. Proc. File No. 3–9758] (October 20, 1998) (broker-dealers that failed to file Form BD–Y2K); Exchange Act Release No. 40895 [Adm. Proc. No. 3–9801] (January 7, 1999) (transfer agents that failed to file Form TA–Y2K).

[10] We also reminded broker-dealers and non-bank transfer agents that failure to adequately prepare for the Year 2000 will not be considered a valid excuse for noncompliance with the requirements of Exchange Act Rules 17a–3, 17Ad–6, and 17Ad–7 to make and keep current books and records. *Supra* note 5. *See also* In re Lowell H. Listrom, Adm. Proc. File No. 3–7156, footnote 7 (March 19, 1992) (Commission stating that ''if a broker-dealer or its agent develops a computer-communications system to facilitate regulatory compliance, failure of that system does not excuse the broker-dealer from its obligation to comply with each of its regulatory responsibilities.ä)

[11] Areas that would be encompassed by the term ''operational capability include the following broker-dealer computer operations: controls in the data center computer operations, such as facilities management; controls regarding infrastructure and physical hazards, staffing and operations practices of the data center; data security practices and policies; controls, practices and policies to ensure adequate development and maintenance of information systems; capacity planning and testing to ensure the continual capability of systems to handle varying amounts of data in a timely fashion; and contingency planning, in particular, the plans and procedures to resolve systems failures and to ensure adequate investor protection in the case of systems failure.

[12] Proposed Rule 15b7–2(a). The term ''customer'' includes a broker or dealer so that a clearing broker that handles orders from other brokers and carries their funds and securities would also be covered by the rule. Proposed Rule 15b7–2(b).

[13] We also note that the national securities exchanges and the National Association of Securities Dealers (''NASD'') may deny membership to broker-dealers that do not meet such standards of operational capability as prescribed by their rules. Exchange Act Sections 6(c)(3)(A), 15 U.S.C. 78f(c)(3)(A), and 15A(g)(3)(A), 15 U.S.C. 78o–3(g)(3)(A). For example, the New York Stock Exchange (''NYSE'') may summarily suspend a member who is in such operating difficulty that the exchange determines and so notifies us that the member cannot be permitted to continue to do business. NYSE Rule 475(b)(ii). The NASD also has a similar rule under which the NASD may impose various restrictions on its members experiencing operational difficulties. NASD Rule 3130 and IM–3130.

violating the books and records provisions. However, these actions generally can only be brought after customers are harmed by such a failure. By codifying the operational capability requirement into a Commission rule, we can take preventive measures before a broker-dealer's operational problems adversely affect its customers or the markets. For example, in a cease-and-desist proceeding, the Commission would have the ability to require a broker-dealer experiencing an operational difficulty to take remedial steps to effect compliance with the proposed rule upon such terms and conditions and within such time as the Commission may specify.[14]

Because the rule is aimed at overall capacity and mission critical systems that affect processing of customer securities transactions, isolated systems problems unrelated to a broker-dealer's core business would not violate the rule. For example, there can be occasional delays or outages in electronic systems due to a high demand or software glitches. However, if delays or system outages occur consistently due to insufficient systems capacity that result in customer orders not receiving timely executions or customers not receiving timely confirmations, then a broker-dealer could be in violation of the proposed rule and would need to take appropriate actions before it could resume its normal operation.

Under the Exchange Act, we have broad authority to conduct reasonable examinations of registered broker-dealers.[15] We and the SROs will conduct examinations of registered broker-dealers, including their automated systems and records, as are necessary to assess their operational capability and, as discussed below, whether they have a material Year 2000 problem.[16] We seek comment on whether we should specifically include a requirement in the proposed rule for broker-dealers to document their operational capability, and what types of documents would suffice.

Some brokers (''introducing broker-dealers'') have agreements with another broker (''clearing broker-dealer'') pursuant to which the clearing broker-dealer performs many of the functions related to securities transactions.[17] In these situations, the introducing and clearing broker-dealers agree on the allocation of responsibilities for handling customer trades and accounts and other matters.[18] We note, however, that such arrangements do not relieve either broker-dealer of its responsibilities under the federal securities laws, including this proposed rule and proposed temporary Rule 15b7–3T discussed below.[19] For example, an introducing broker-dealer that has an arrangement with a clearing broker-dealer should confirm that the clearing broker-dealer is able to perform the functions it has agreed to perform. If an introducing broker-dealer becomes aware that its clearing broker-dealer is experiencing operational difficulty, the introducing broker-dealer should promptly make other arrangements to assure appropriate processing of its trades.

B. Proposed Temporary Rule 15b7–3T (Operational Capability in a Year 2000 Environment)

Proposed temporary Rule 15b7–3T specifically addresses what it means to be operationally capable in the context of Y2K, and outlines the procedures for those broker-dealers that are not Year 2000 compliant by August 31, 1999, but are in the process of remediating their Y2K problems.

a. Material Year 2000 Problems

The rule states that a registered broker-dealer would not be considered operationally capable if it has a material Year 2000 problem. We understand that the determination of whether a particular broker-dealer has a material Year 2000 problem depends on the specific facts and circumstances of a particular case. To provide some measure of certainty in this regard, however, the proposed rule states that a broker-dealer would have a material Year 2000 problem if, at any time on or after August 31, 1999:

- Any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter, and
- The error impairs or, if uncorrected, is likely to impair, any of its mission critical computer systems.[20]

The proposed definition is not intended to include a broker-dealer whose systems have minor technical problems regarding the reading of dates if these problems do not adversely affect the broker-dealer's core business.

A broker-dealer would be *presumed* to have a material Year 2000 problem (and would therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, it:

- Does not have written procedures designed to identify, assess, and remediate any Year 2000 problems in its mission critical systems;[21]
- Has not verified its Year 2000 remediation efforts through reasonable internal testing of its mission critical systems;[22]
- Has not verified its Year 2000 remediation efforts by satisfying any applicable Year 2000 testing requirements imposed by a self-regulatory organization;[23] or

[14] *See* 15 U.S.C. 78u–3.

[15] *See, e.g.,* 15 U.S.C. 78q(b).

[16] We, of course, have the ability to bring enforcement cases against those who violate these rules.

[17] Under these arrangements, in general, introducing brokers transmit orders, funds, and securities of customers to the clearing broker, which then executes the orders and maintains custody of the funds and securities. In addition to holding funds and securities, clearing brokers are contractually responsible for the settlement of the securities transactions of the other broker-dealer and the maintenance of certain records relating to those transactions. The exact scope of the respective responsibilities depends upon the individual arrangements.

[18] *See, e.g.,* NYSE Rule 382.

[19] *See* 17 CFR 240.17a–4(i) (agreement with an outside entity does not relieve broker-dealers from the responsibility to prepare and maintain the required records). We note, however, that broker-dealers that rely upon the systems of an SRO, including a registered clearing agency, for processing securities transactions would not be responsible in the event the SRO's systems fail.

[20] Proposed temporary Rule 15b7–3T(b)(1). The term ''mission critical system'' is defined as any system that is necessary, depending on the nature of the broker-dealer's business, to assure the prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities. Proposed temporary Rule 15b7–3T(f)(1). The phrase ''depending on the nature of their business'' is intended to tailor the definition of a ''material Year 2000 problem'' to different broker-dealers' businesses and operations. For example, broker-dealers that do not use computer systems in the conduct of their business may have little or no direct obligations under this proposal. To the extent, however, that some broker-dealers rely on third parties in processing their securities transactions and related activities, these broker-dealers should take reasonable steps to verify that such third parties do not have material Y2K problems. Otherwise, these broker-dealers would not be in compliance with the proposed rules.

[21] The appropriate scope of such procedures would obviously vary depending on the nature of a broker-dealer's business and the size and complexity of its computer systems. To provide flexibility, we are not prescribing specific written procedures. However, as a baseline, broker-dealers should, at a minimum, use industry standards. For example, the NASD has published a High-Level Plan, prepared by the Securities Industry Association, summarizing the standard components of a sample Year 2000 Project Plan. NASD Year 2000 Member Information (1998).

[22] The General Accounting Office has recommended a set of testing guidelines that we believe is reasonable for broker-dealers to follow. It describes five phases of Year 2000 testing activities, beginning with establishing an organizational testing infrastructure, followed by designing, conducting and reporting on software unit testing, software integration testing, system acceptance testing, and end-to-end testing. GAO Year 2000 Computing Crisis: A Testing Guide (November 1998) (''GAO Guidelines'').

[23] We have approved SRO rule changes that permit the SROs to require their members to

Continued

• Has not remediated all exceptions contained in any public independent accountant's report prepared on behalf of the broker-dealer pursuant to Exchange Act Rule 17a-(5)(e)(5)(vi).

If a broker-dealer fails to meet any of the four conditions above, it will be presumed to have a material Year 2000 problem.

b. Notification to the Commission and DEA

The proposed rule requires any registered broker-dealer that experiences, detects, or continues to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the Commission and its DEA of the problem.[24] Broker-dealers that are presumed to have a material Year 2000 problem must notify us as well. Notice to the Commission must be sent by overnight delivery to the attention of the Secretary, Mail Stop 0609, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. The notification requirement is intended to alert the Commission and a broker-dealer's DEA so that we can assess the broker-dealer's condition and decide if its Year 2000 problems threaten customers or the integrity of the markets. We intend to make this information public so that customers and counterparties of these broker-dealers can assess the potential impact on them and take any appropriate action.

c. Prohibition on Non-compliant Broker-Dealers and Certification

A broker-dealer that is not operationally capable because it has a material Year 2000 problem would be prohibited, on or after August 31, 1999, from effecting any transaction in, inducing the purchase or sale of, any security, receiving or holding customer funds or securities, or carrying customer accounts.[25] However, a broker-dealer with a material Y2K problem on or after August 31, 1999, could continue to operate its business if, in addition to providing us and its DEA with the notice required by paragraph (c) of the rule, it provided us a certificate signed by its chief executive officer (or an individual with similar authority) stating:[26]

• The broker-dealer is in the process of remediating its material Year 2000 problem;

• The broker-dealer has scheduled testing of its affected mission critical systems to verify that the material Year 2000 problem has been remediated and specifies the testing dates;

• The date (which cannot be later than October 15, 1999) by which the broker-dealer anticipates it will have remediated the Year 2000 problem and will therefore be operationally capable; [27] and

• Based on inquiries and to the best of his or her knowledge, the broker or dealer does not anticipate that the existence of the material Year 2000 problem will impair its ability, depending on the nature of its business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities. We intend to make this information public so that customers and counterparties of these broker-dealers can take any appropriate action.

There are two proposed limitations to this certification provision. First, as stated above, the target remediation date cannot be later than October 15, 1999.[28] The purpose of this limitation is to protect investors by providing sufficient time for a broker-dealer that does not meet its target remediation date to unwind its business and to either return funds and securities that belong to its customers or make alternative arrangements with a Y2K compliant broker-dealer, as appropriate.[29] This date is also intended to require a broker-dealer that is not Y2K compliant to cease operation so that it does not communicate inaccurate and damaging information to the markets. Second, notwithstanding the fact that a broker-dealer has filed a certificate, the Commission or a court of competent jurisdiction can order a broker-dealer to comply with Rule 15b7–3T(d) (*i.e.*, to cease to do business) if it is in the public interest or for the protection of investors. For example, we would take action in the public interest under this provision if the representations contained in the certificate were false.

C. Proposed Temporary Rule 17a–9T

Proposed temporary Rule 17a–9T would require certain broker-dealers to make a separate copy of their trade blotter and their securities record or ledger (''stock record'') for the last two business days of 1999.[30] This proposed rule is intended to assist broker-dealers, the Commission, the DEAs, and the

conduct Year 2000 testing. *See* Exchange Act Rel. No. 40745 (December 3, 1998), 63 FR 68324 (December 10, 1998) (NASD); Exchange Act Rel. No. 40836 (December 28, 1998), 64 FR 1037 (January 7, 1999) (American Stock Exchange); Exchange Act Rel. No. 40837 (December 28, 1998), 64 FR 1055 (January 7, 1999) (NYSE); Exchange Act Rel. No. 40838 (December 28, 1998), 64 FR 1044 (January 7, 1999) (Chicago Board Options Exchange); Exchange Act Rel. No. 40839 (December 28, 1998), 64 FR 1046 (January 7, 1999) (Chicago Stock Exchange); Exchange Act Rel. No. 40870 (December 31, 1998), 64 FR 1263 (January 8, 1999) (Philadelphia Stock Exchange); Exchange Act Rel. No. 40871 (December 31, 1998), 64 FR 1838 (January 12, 1999) (Boston Stock Exchange); Exchange Act Rel. No. 40893 (January 7, 1999) (Pacific Stock Exchange), 64 FR 2932 (January 19, 1999); Exchange Act Rel. No. 40696 (November 20, 1998), 63 FR 65829 (November 30, 1998) (Depository Trust Company); Exchange Act Rel. No. 40889 (January 6, 1999), 64 FR 2691 (January 15, 1999) (MBS Clearing Corporation); and Exchange Act Rel. No. 40946 (January 14, 1999), 64 FR 3328 (January 21, 1999) (National Securities Clearing Corporation).

[24] Proposed temporary Rule 15b7–3T(c). This notification requirement is in addition to the other requirements to file reports with us under Rule 17a-5(e)(5), 17 CFR 240.17a-5(e)(5). We anticipate that the vast majority of broker-dealers that have a material Y2K problem will file one notice regarding their problem. However, if a broker-dealer experiences another material problem that was not discussed in an earlier notice, it would need to file an additional notice to discuss the new problem.

[25] Proposed temporary Rule 15b7–3T(d). A broker-dealer that is presumed to have a material Year 2000 problem has the burden to prove that it does not have a material Y2K problem, and must come forward before October 15, 1999 with sufficient evidence to rebut the presumption. We ask comment on the appropriate procedures for rebutting the presumption.

[26] Proposed temporary Rule 15b7–3T(e)(1). The Commission expects that a broker-dealer that is presumed to have a material Y2K problem would also rely upon this provision.

[27] We call this date ''the target remediation date.''

[28] We seek comment on whether the rule should specifically allow for the filing of more than one such certificate in case a broker-dealer does not complete its remediation efforts by a target remediation date that precedes October 15, 1999 or in case it has filed an additional notice discussing a new problem. We also seek comment on whether the certificate should also be filed with DEAs.

[29] We seek comment on whether the proposed date of October 15, 1999, would be too late or too early.

[30] Rule 17a–3(a)(1) requires every broker-dealer to make and keep current a trade blotter containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. The trade blotter is required to show the account for which each transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. 17 CFR 240.17a–3(a)(1). Rule 17a–3(a)(5) requires every broker-dealer to make and keep current a stock record reflecting separately for each security all long or short positions (including securities in safekeeping and securities that are the subject of repurchase or reverse repurchase agreements) carried by the broker-dealer for its account or for the account of its customers, including the name or designation of the account in which each position is carried. The stock record is also required to show the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date the differences were discovered. 17 CFR 240.17a–3(a)(5).

Securities Investor Protection Corporation in identifying all securities positions carried by the broker-dealer and the location of the securities in the event that a broker-dealer experiences Year 2000 problems. Specifically, a broker-dealer that is required to maintain as of December 30 and December 31, 1999, minimum net capital of $250,000 [31] would be required to make and to preserve a separate copy of its trade blotter and stock record as of the close of business of each of the last two business days of 1999.[32] The record may be kept on paper or on any micrographic or electronic storage media acceptable under Rule 17a–4(f). Proposed temporary Rule 17a–9T would only require broker-dealers to make and preserve a separate copy of an existing record and to ensure that the record is created at the close of business on December 30 and December 31, 1999. It would not require a broker-dealer to create any new record.[33] The Commission requests comment on whether we should provide for exemptions from any of the requirements of this proposed rule, either unconditionally or on specified terms and conditions.[34]

D. Proposed Rule 17Ad–20

Under the proposed rules, transfer agents would be subject to similar obligations. Specifically, all registered transfer agents would be required to have operational capability, taking into consideration the nature of their business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records, including:

- Countersigning such securities upon issuance;
- Monitoring the issuance of such securities with a view to preventing unauthorized issuance;
- Registering the transfer of such securities;
- Exchanging or converting such securities; and
- Transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.[35]

We are proposing this rule under Exchange Act Section 17A(d)(1), which allows us to prescribe rules for registered transfer agent activity as necessary or appropriate in the public interest, for the protection of investors, or for the safeguarding of securities and funds.

Some registered transfer agents have agreements with another registered transfer agent (variously referred to as the recordkeeping transfer agent,[36] co-transfer agent,[37] or service company [38]) pursuant to which the third party performs many of the transfer agent functions. The exact scope of the respective responsibilities depends upon individual arrangements. Such arrangements do not relieve the registered transfer agent of its responsibilities under the federal securities laws, including this proposed rule and proposed temporary Rule 17Ad–21T. For example, a registered transfer agent that has an arrangement with a service company should ensure that the service company has sufficient operational capability to perform the functions it has agreed to perform, or if a registered transfer agent becomes aware that its service company is experiencing operational difficulty, the registered transfer agent should promptly make appropriate arrangements.

Similar to our ability to examine broker-dealers, the Exchange Act gives us broad authority to conduct reasonable examinations of registered transfer agents.[39] We plan to conduct examinations of registered non-bank transfer agents, including their automated systems and records, as necessary to assess their operational capability and whether they have a material Year 2000 problem, as discussed below. We seek comment on whether we should specifically include a requirement to document their operational capability and what types of documents would suffice.

E. Proposed Temporary Rule 17Ad–21T (Operational Capability in a Year 2000 Environment)

a. Definition of Material Year 2000 Problem

This proposed rule, applicable to non-bank transfer agents, is similar to proposed temporary Rule 15b7–3T, applicable to broker-dealers.[40] In this regard, proposed temporary Rule 17Ad–21T defines a ''material Year 2000 problem.'' According to the proposed rule, a non-bank transfer agent would have a material Year 2000 problem if, at any time on or after August 31, 1999:

- Any of its computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter, and
- The error impairs or, if uncorrected, is likely to impair, any of its mission critical computer systems.[41]

The proposed definition is not intended to include a non-bank transfer agent whose system has a minor technical problem regarding the reading of dates if such problem does not adversely affect the transfer agent's core business.

b. Presumption of a Material Year 2000 Problem

In order to provide additional guidance, the proposed rule would provide that a non-bank transfer agent would be *presumed* to have a material Year 2000 problem (and would therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, it:

- Does not have written procedures designed to identify, assess, and

[31] *See* 17 CFR 240.15c3–1(a)(2).

[32] A broker-dealer that makes a stock record that reflects both trade date and settlement date positions would not be required to make a separate trade blotter.

[33] We understand that most broker-dealers already make and preserve a separate copy of their record as a good business practice.

[34] If such exemptions were to be included in Rule 17a–9T, the Commission also asks comment on whether the Director of the Division of Market Regulation should have delegated authority to grant such exemptions on the Commission's behalf.

[35] Proposed Rule 17Ad–20.

[36] ''Recordkeeping transfer agent,'' as defined in Rule 17Ad–9(h), 17 CFR 240.17Ad–9(h), means a registered transfer agent that maintains and updates the master securityholder file.

[37] ''Co-transfer agent,'' as defined in Rule 17Ad–9(i), 17 CFR 240.17Ad–9(i), means a registered transfer agent that transfers securities but does not maintain and update the master securityholder file.

[38] ''Service company,'' as defined in Rule 17Ad–9(k), 17 CFR 240.17Ad–9(k), means a registered transfer agent engaged by another registered transfer agent to perform transfer agent functions.

[39] 15 U.S.C. 78q(b).

[40] Registered transfer agents that are also banks are subject to the jurisdiction of the federal banking agencies. This proposed rule would only apply to registered transfer agents that are not banks. The term ''non-bank transfer agent'' means a transfer agent, whose appropriate regulatory agency (''ARA'') is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation. The term ARA is defined in Exchange Act Section 3(a)(34), 15 U.S.C. 78c(a)(34).

[41] Proposed temporary Rule 17Ad–21T(b)(1). The term ''mission critical system'' is defined as any system that is necessary, depending on the nature of the transfer agent's business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d). Proposed temporary Rule 17Ad–21T(g)(1). The phrase ''depending on the nature of their business'' is intended to tailor the definition of a ''material Year 2000 problem'' to different transfer agents' businesses and operations. Some non-bank transfer agents rely on third parties to handle their transfer agent functions. In order for such transfer agents to be in compliance with the proposed rules, the transfer agents should take reasonable steps to verify that third parties do not have material Year 2000 problems.

remediate any Year 2000 problems in its mission critical systems;[42]

- Has not verified its Year 2000 remediation efforts through reasonable internal testing of its mission critical systems and reasonable testing of its external links;[43] or
- Has not remediated all exceptions contained in any public independent accountant's report prepared on behalf of the transfer agent pursuant to Rule 17Ad–18(f).

If a non-bank transfer agent fails to meet any of the three conditions above, it would be presumed to have a material Year 2000 problem.

c. Notification to the Commission

The rule would require any registered non-bank transfer agent that experiences, detects, or continues to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify us of the problem.[44] Non-bank transfer agents that are presumed to have a material Year 2000 problem must notify us as well. As with broker-dealers, this information would be released to the public.

d. Prohibition on Non-compliant Transfer Agents and Certification

Similar to proposed temporary Rule 15b7–3T, a non-bank transfer agent that is not operationally capable because it has a material Year 2000 problem would not be permitted to, on or after August 31, 1999, engage in any transfer agent function, including: (i) Countersigning securities upon issuance; (ii) monitoring the issuance of securities with a view to preventing unauthorized issuance; (iii) registering the transfer of securities; (iv) exchanging or converting securities; or (v) transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.[45] A transfer agent with a material Year 2000 problem on or after August 31, 1999, would be permitted to continue to operate its business if, in addition to providing us the notice required by paragraph (c) of the rule, it provided us with a certificate of its chief executive officer (or an individual with similar authority).[46]

There are two proposed limitations to this certification provision. First, the target remediation date cannot be later than October 15, 1999.[47] The purpose of this limitation is to provide sufficient time for a non-bank transfer agent that does not meet its target remediation date to unwind its business and to transfer and convert its database, file layouts, and securityholder files to a compliant registered transfer agent.[48] Second, notwithstanding the fact that a transfer agent has filed a certificate, we or a court of competent jurisdiction can order a non-bank transfer agent to comply with proposed Rule 17Ad–21T(d) if it is in the public interest or for the protection of investors; that is, we can order it to cease doing business.

e. Recordkeeping

Proposed temporary Rule 17Ad–21T contains a recordkeeping requirement.[49] Specifically, the rule would require every non-bank transfer agent to maintain a segregated copy of its database, file layouts (defined in the rule as ''the description and location of information contained in the database''), and all relevant files beginning August 31, 1999, and ending in March 31, 2000. This back-up copy of the database and file layouts must not be located with or held in the same computer system as the primary records. These records must be copied at the end of every business day and must be stored for five business days in a manner that will allow for the possible transfer and conversion to a transfer agent that is Year 2000 compliant.[50] In the event of a transfer agent failure, it may be impossible to retrieve files unless the transfer agent has previously stored a separate set of back-up records. Thus, this requirement would help facilitate the transfer to and conversion of records to another registered transfer agent, if necessary.[51]

IV. Request for Comments

We solicit commenters' views on all aspects of the proposed rules. In addition, we solicit comments on alternative ways of minimizing the risk that broker-dealers or non-bank transfer agents that are not Year 2000 compliant may harm investors and the securities markets in general.

In addition to the specific comments we ask in other parts of this release, we also seek comment on the following issues:

- Whether the proposed standards for Rules 15b7–2 and 17Ad–20 are sufficiently objective or whether there are alternative standards that could be used;
- Whether the scope of the proposed rules is appropriate or certain broker-dealers or transfer agents should be excluded from the rules;
- Whether August 31, 1999 as the date after which a notification to us is required is reasonable, or whether another date would be more appropriate;
- Whether the proposed definition of a material Year 2000 problem is appropriate;
- Whether the proposed testing as required by SROs would provide an appropriately consistent testing method for broker-dealers, or whether there is another alternative testing method that can be used for broker-dealers and non-bank transfer agents;[52]
- The appropriate division of responsibilities of introducing and clearing brokers and of registered transfer agents and service companies regarding operational capability and Year 2000 compliance;
- Whether the proposed rules should expressly require that broker-dealers and non-bank transfer agents that are

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[42] *See supra* note 21.

[43] Unlike broker-dealers, transfer agents do not belong to any SROs. Accordingly, this proposed rule permits any reasonable testing of external links. We believe, however, that it would be reasonable for certain transfer agents to rely on testing guidelines established by SROs. We specifically seek comment on whether testing requirements established by national securities exchanges, the NASD, the Federal banking regulators, or the Depository Trust Company could be used for the purposes of the proposed rule. *See also* GAO Guidelines, *supra* note 22.

[44] Proposed temporary Rule 17Ad–21T(c). This notification requirement is in addition to the other requirements to file reports with us under Rule 17Ad–18. Notice must be sent by overnight delivery to the attention of the Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

[45] Proposed temporary Rule 17Ad–21T(d). A transfer agent that is presumed to have a material Year 2000 problem has the burden to prove that it does not have a material Y2K problem, and must come forward before October 15, 1999 with sufficient evidence to rebut the presumption. We ask comment on the appropriate procedures for rebutting the presumption.

[46] Proposed temporary Rule 17Ad–21T(e)(1). The Commission expects that a transfer agent that is presumed to have a material Y2K problem would also rely upon this provision. The required contents of the certificate of transfer agents are similar to the broker-dealer certificate, as discussed earlier. As with broker-dealers, this information will be released to the public.

[47] We seek comment on whether the rule should specifically allow for the filing of more than one such certificate in case a transfer agent does not complete its remediation efforts by a target remediation date that precedes October 15, 1999.

[48] We seek comment on whether the proposed date of October 15, 1999 would be too late or too early.

[49] Proposed temporary Rule 17Ad–21T(f).

[50] We understand that most transfer agents already make and preserve a separate copy of their record as a good business practice.

[51] We understand that the logistics of the transfer and conversion process could be time consuming and would involve getting approval from the issuers to the appointment of the successor transfer agent.

[52] We note that the banking regulators recently published interagency guidelines establishing Year 2000 standards that also included the scope of required testing. *Interagency Guidelines Establishing Year 2000 Standards for Safety and Soundness*, 63 FR 55486 (October 15, 1998). Would such testing requirement be appropriate for broker-dealers or non-bank registered transfer agents?

not Year 2000-compliant notify their customers of their non-compliant status in addition to notifying the Commission and, in the case of broker-dealers, DEAs;

- Whether the proposed date of October 15, 1999, as the final date after which no broker-dealers and non-bank transfer agents that are not Year 2000-compliant could continue to operate is appropriate or should be earlier or later;
- Whether the proposed definitions of ''mission critical system'' are appropriate, too narrow, or too broad, and whether the phrase ''depending on the nature of the business'' is clear or provides sufficient flexibility;
- Whether we should require that an independent third party verify the remediation efforts, and if so, whether such third party must be an outside auditor or consultant or could be a qualified independent internal party;
- Whether there are any practical concerns regarding chief executive officers (or individuals with similar authority) signing the certificate, and if so, whether there are any ways to mitigate such concerns;
- Whether the conditions set out for presuming broker-dealers and non-bank transfer agents to have a material Year 2000 problem are appropriate or whether we should also include as a condition that the registrant has not complied with the applicable requirements of Rule 17a–5(e)(5) and of Rule 17Ad–18; [53]
- Whether the proposed recordkeeping requirements are appropriate (for example, whether the proposed one-year retention period for broker-dealers and the proposed five-day period for non-bank transfer agents is too short or too long; whether the proposed period of August 31, 1999 to March 31, 2000, for non-bank transfer agents is too long or too short; and whether we should require broker-dealers to make separate records for more than the proposed two days);
- Whether we should permit the filing of another notice in the event broker-dealers and non-bank transfer agents that have filed a notification and/or a certificate believe that they no longer have a material Year 2000 problem; and
- Whether compliance with the Commission's automation review program standards should create a presumption that broker-dealers are operationally capable.[54]

V. Costs and Benefits of the Proposed Rule and Its Effect on Competition, Efficiency and Capital Formation

We request that commenters provide analyses and data relating to the costs and benefits associated with the proposed rules. This information will assist us in our evaluation of the costs and benefits that may result from the proposed rules.

We recognize that the proposed rules may impose certain costs on broker-dealers and transfer agents. To avoid being presumed to have a material Year 2000 problem, broker-dealers and non-bank transfer agents must, on or after August 31, 1999, have written procedures, have verified their Year 2000 remediation efforts through appropriate testing, and have remediated all exceptions contained in any public independent accountant's report. However, these are costs most broker-dealers and non-bank transfer agents already must incur in order to comply with other Commission and/or SRO rules. In addition, virtually all broker-dealers and non-bank transfer agents must already incur these costs in order to take the necessary steps to become Year 2000 compliant and therefore to stay in business post-Year 2000.

Broker-dealers and transfer agents that have material Year 2000 problems or do not have the operational capability to conduct their respective businesses could bear additional costs—that is, the costs of not being able to engage in their business. However, the market itself may impose these costs on them once it became clear that they were not ready for the Year 2000 or do not have the required operational capability.

Moreover, we believe that the benefits of the proposed rules are significant. The implementation of these rules will (1) protect investors by reducing individual firm risk and systemic risk as a result of computer systems failures at broker-dealers and transfer agents, and (2) minimize any potential disruptions to the functioning of the securities markets. Customers of broker-dealers and transfer agents that are not ready for the Year 2000 could suffer severe consequences, including loss of their ability to effect transactions in their accounts in a timely manner. Non-Year 2000 compliant broker-dealers and non-bank transfer agents also pose risks to the financial system as a whole. If buyers and sellers of securities are unable to effect transactions, the financial markets will not efficiently operate and investors will be subject to unnecessary risk. By providing the ability to take prophylactic measures designed to minimize these risks, we believe that the proposed rules will offer significant benefits to investors and markets as a whole.

We also recognize that the proposed rules will place burdens to make and keep records on broker-dealers and non-bank transfer agents. The records required to be made and kept under the proposed rules are records that are currently kept by broker-dealers and transfer agents. Thus, we are not proposing that respondents generate new records but only requiring that a back-up copy be made and kept. The proposed rules will aid the Commission and the public in the event of operational failures by broker-dealers and non-bank transfer agents in identifying all securities positions carried by the broker-dealer, and transferring to and conversion of records to another entity. We believe that the proposed rules will offer significant benefits of guarding against the impact of Year 2000 problems.

Section 23(a)(2) of the Exchange Act requires us to consider the anti-competitive effects of proposed rules, if any.[55] We ask for comment on any anti-competitive effects of the proposed rules. We also solicit commenters' views regarding the effects of the proposed rules on competition, efficiency, and capital formation. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we also seek comments on the proposed rules' potential impact (including any empirical data) on the economy on an annual basis, any increase in costs or prices for consumers, and any effect on competition, investment or innovation.

VI. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis (''IRFA''), which has been prepared in accordance with the provisions of the Regulatory Flexibility Act (''RFA''),[56] relates to the proposed new Rules 15b7–2, 15b7–3T, 17a–9T,

[53] Broker-dealers with a minimum net capital requirement of $5,000 or more must file Form BD–Y2K. Transfer agents that are not banks or savings associations must file Form TA–Y2K. The next reports are due on April 30, 1999. 17 CFR 240.17a–5(e)(5) and 17 CFR 240.17Ad–18.

[54] *See* Exchange Act Rel. No. 27445 (November 16, 1989), 54 FR 48704 (''ARP I''); Exchange Act Rel. No. 29185 (May 9, 1991), 56 FR 22489 (''ARP II''). ARP I and ARP II were published in response to operational difficulties experienced by SRO automated systems during the October 1987 market break. While the program did not directly apply to broker-dealers, the Commission noted that all broker-dealers should engage in testing and use the policy statement as a guideline. *See* ARP I, 54 FR at 48706; ARP II, 56 FR at 22493, at n.15.

[55] 15 U.S.C. 78w(a)(2).

[56] 5 U.S.C. 603(a).

17Ad–20, and 17Ad–21T under the Exchange Act.

A. Reason for Proposed Action

It is essential that broker-dealers and transfer agents have sufficient operational capability to process transactions for their customers. In addition, unless proper modifications have been made, many computer systems will incorrectly read the date ''01/01/00'' as being in the year 1900 or another incorrect date. Year 2000 problems could have negative repercussions throughout the financial system because of the extensive interrelationship between broker-dealers, transfer agents, other market participants and markets. The reason for the proposed rules is to reduce the chances of harm to investors and the potential systemic risk to the public and the financial markets as a result of operational failures by registered broker-dealers and non-bank transfer agents.

B. Objectives

a. Proposed Rule 15b7–2

The objective of proposed Rule 15b7–2 is to require that every registered broker-dealer has the operational capability to conduct its business. The proposed rule prohibits registered broker-dealers that are not operationally capable from effecting any transactions in securities, inducing the sale or purchase of securities, receiving or holding customer funds or securities, or carrying customer accounts.

b. Proposed Temporary Rule 15b7–3T

The objective of proposed temporary Rule 15b7–3T is to require broker-dealers that have or are presumed to have a material Year 2000 problem on or after August 31, 1999 to notify the Commission and their designated examining authority. Those broker-dealers that have a material Year 2000 problem must also cease to conduct securities business. The proposed rule, however, is also intended to permit those brokers or dealers that are not operationally capable as a result of having a material Year 2000 problem on or after August 31, 1999 to submit a certificate containing certain attestations regarding their Year 2000 status and still continue to operate their business, but in no event later than October 15, 1999.

c. Proposed Temporary Rule 17a–9T

The objective of proposed temporary Rule 17a–9T is to require certain broker-dealers to make and preserve a separate trade blotter pursuant to Rule 17a–3(a)(1)[57] and a separate securities record pursuant to Rule 17a–3(a)(5) as of the close of business each of the last two business days of 1999. Proposed Rule 17a–9T would only require a broker-dealer to make and preserve a copy of an existing record and to ensure that the record is created at the close of business on December 30 and December 31, 1999. Proposed temporary Rule 17a–9T would also require those brokers or dealers to keep and make available those records for a period of not less than one year.

d. Proposed Rule 17Ad–20

The objective of proposed Rule 17Ad–20 is to require that every registered transfer agent has the operational capability to conduct its business. The proposed rule would prohibit transfer agents from engaging in any transfer function unless they have and maintain operational capability to assure the prompt and accurate transfer or processing of securities, the maintenance of master securityholder files, and the production and retention of required records.

e. Proposed Temporary Rule 17Ad–21T

The objective of proposed temporary Rule 17Ad–21T is to require non-bank transfer agents that have or are presumed to have a material Year 2000 problem on or after August 31, 1999 to notify the Commission. Those transfer agents that have a material Year 2000 problem must also cease to conduct transfer agent business. The proposed rule, however, is also intended to permit those transfer agents that are not operationally capable as a result of having a material Year 2000 problem on or after August 31, 1999 to submit a certificate containing certain attestations regarding their Year 2000 status and still continue to operate their business, but in no event later than October 15, 1999.

In addition, the proposed temporary rule would require registered non-bank transfer agents to maintain a separate copy of its database, file layouts and all relevant files in an easily accessible off-site location from August 31, 1999 to March 31, 2000. The proposed rule would require such records to be stored for five business days. The objective of this recordkeeping requirement is to help facilitate the transfer to and conversion of records to a Year 2000 compliant transfer agent, if necessary.

C. Legal Basis

Proposed Rules 15b7–2, 15b7–3T and 17a–9T are being proposed pursuant to Sections 3(b), 15(b) and (c), 17, and 23(a) of the Exchange Act [15 U.S.C. 78c(b), 78o(b) and (c), 78q and 78w(a)]. Proposed Rule 17Ad–20 and 17Ad–21T are being proposed pursuant to Sections 17(a), 17A(d), and 23(a) of the Exchange Act [15 U.S.C. 78q(a), 78q–1(d) and 78w(a)].

D. Small Entities Subject to the Rules

For purposes of Commission rulemaking, paragraph (c) of Rule 0–10 under the Exchange Act[58] defines the term ''small business'' or '' small organization'' to include any broker or dealer that: (1) Had total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter); and (2) Is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section. For purposes of Commission rulemaking, paragraph (h) of Rule 0–10 under the Exchange Act[59] defines the term ''small business'' or ''small organization'' to include any transfer agent that: (1) Received less than 500 items for transfer and less than 500 items for processing during the preceding six months (or in the time that it has been in business, if shorter); (2) Transferred items only of issuers that would be deemed ''small businesses'' or ''small organizations'' as defined in this section; (3) Maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the time that it has been in business, if shorter); and (4) Is not affiliated with any person (other than a natural person) that is not a small business or small organization under this section.

The Commission staff estimates that approximately 5200 registered brokers or dealers qualify as ''small entities'' for purposes of the RFA. All registered brokers or dealers would be subject to the requirements of proposed Rule 15b7–2 and proposed temporary Rule 15b7–3T.

The Commission staff estimates that approximately 750 out of 1,120 registered transfer agents (thus subject to proposed Rule 17Ad–20) qualify as ''small entities'' for purposes of the RFA. Approximately 430 out of 600 non-bank transfer agents (thus subject to

[57] 17 CFR 240.17a–3.

[58] 17 CFR 240.0–10(c).

[59] 17 CFR 240.0–10(h).

proposed Rule 17Ad–21T) qualify as small entities.

Proposed temporary Rule 17a–9T applies only to broker-dealers that are required to maintain a minimum net capital of $250,000 pursuant to Rule 15c3–1(a)(2)(i) as of December 30 and 31, 1999. Because of the minimum capital requirement, the Commission staff estimates that 4,300 of the 8,000 registered broker-dealers would be required to comply.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The Commission believes that, for business reasons, prudent broker-dealers and transfer agents should already have developed plans for potential computer problems caused by Year 2000 problems. Therefore, the Commission believes that the reporting obligations of broker-dealers and transfer agents subject to the proposed rules relate to notifying the Commission of material Year 2000 problems on or after August 31, 1999 and submitting the certificate signed by their chief executive officer to continue to operate their business beyond August 31, 1999.

Proposed temporary Rule 17a–9T provides that only those broker-dealers required to maintain a minimum net capital of $250,000 would be required to make and preserve a separate trade blotter and a separate securities record or ledger as of the close of business of each of the last two business days of 1999. The trade blotter and securities record or ledger would only require a broker-dealer to make and preserve a copy of an existing record. The Commission notes that this is not a continuing obligation, but would only be for December 30 and 31, 1999.

Proposed Rule 17Ad–21T(f) would require non-bank registered transfer agents to maintain a separate copy of their database, file layouts and all relevant files in an easily accessible off-site location beginning August 31, 1999, and ending March 31, 2000. The proposed rule would require that such records are copied at the end of every business day and stored for five days on a rolling basis in a manner that will allow for the possible transfer and conversion to a transfer agent that is Year 2000 compliant.

F. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap, or conflict with the proposed rules.

G. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse economic impact on small entities. Pursuant to Section 3(c) of the RFA, the Commission considered the following alternatives:

(a) The establishment of differing compliance or reporting requirements or timetables the take into account the resources available to small entities;

(b) The clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities;

(c) The use of performance rather than design standards; and

(d) An exemption from coverage of the rules, or any part thereof, for such small entities.

Regarding the first alternative, the Commission has incorporated such a compliance threshold for proposed temporary Rule 17a–9T. This threshold, based on capital, would exclude many smaller broker-dealers from the rule. The Commission believes it is important for all registered broker-dealers and transfer agents to be operationally capable and report material Year 2000 problems to the Commission and, in the case of broker-dealers, their designated examining authority.

Regarding the second alternative, the Commission believes that the proposal could not be formulated differently for small entities and still achieve the stated objectives. The Commission notes that it considered small entities in developing proposed Rule 17a–9T and incorporated a minimum capital level for compliance.

Regarding the third alternative, the proposed rules incorporate the use of performance standards because they do not require how broker-dealers or transfer agents become operationally capable, but only require them to be operationally capable in order to be able to perform their functions for investors. Similarly, the notice requirements do not specify the form those notices must take. Adequate notice must be provided to the Commission for purposes of temporary Rules 15b7–3T and 17Ad–221T, but the Commission is not proposing to determine the design or the format of those notices.

Regarding the fourth alternative, the Commission notes that smaller broker-dealers would be exempt from the requirements of proposed temporary Rule 17a–9T. The Commission believes, however, that with respect to the other proposed rules including all registered broker-dealers and transfer agents is important in protecting investors from operational and Year 2000 problems.

Therefore, having considered the foregoing alternatives in the context of the proposed rules, the Commission believes the proposed rules include regulatory alternatives that minimize the impact on small entities while achieving the stated objectives.

H. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of the IRFA. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis, if the proposed rules are adopted, and will be placed in the same public file as comments received on the proposed rules themselves. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–8–99; this file number should be included on the subject line if e-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Electronically submitted comment letters will also be posted on the Commission's Internet web site (http://www.sec.gov).

VII. Paperwork Reduction Act

Certain provisions of the proposed rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), and the Commission has submitted them to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: ''Rule 15b7–3T,'' ''Rule 17a–9T,'' ''Rule 17Ad–21T(c) and (e),'' and ''Rule 17Ad–21T(f),'' all under the Exchange Act.[60] The proposed rules are necessary to protect investors and the financial markets from Year 2000 problems. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

A. Rule 15b7–3T

Proposed temporary Rule 15b7–3T requires every registered broker or dealer that has or is presumed to have a material Year 2000 problem at any

[60] Proposed rules 15b7–2 and 17Ad–20 do not contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act.

time on or after August 31, 1999, to immediately notify the Commission and its designated examining authority of the problem. In addition, such a broker or dealer may provide a certificate stating that they are in the process of remediating the Year 2000 problem, describing associated testing procedures, stating the date by which they expect to be operationally capable, and asserting that the existence of the Year 2000 problem will not impair their ability to carry out certain functions.

The Commission staff estimates that there would be approximately 59 brokers or dealers that would be affected under the proposed rule. There are approximately 8,000 registered broker-dealers and the Commission staff estimates that approximately 5,900 will have their own systems that will need to be Year 2000 compliant. Based on experience with the Year 2000 problem, the Commission staff estimates that approximately one percent of those broker-dealers might be required to submit notices and may choose to submit certificates under the proposed rule. The Commission emphasizes the serious difficulty in estimating the number of broker-dealers that will have material Year 2000 problems at some point in the future. The Commission expects that most broker-dealers will not have such problems. The Commission staff also estimates that each affected broker-dealer would, on average, submit one certificate and one notice under the proposed rule.

The Commission staff's estimates for burden hours associated with submitting notices and certificates are based on the Commission staff's experience with notices made pursuant to other Commission rules. The Commission staff estimates that each respondent submitting a notice of a material Year 2000 problem would incur an average burden of 0.5 hours. In addition, the Commission staff estimates that each respondent submitting a certificate would incur an average of 0.5 hours. The notice requirement of the proposed rule is mandatory for all affected brokers and dealers. The certificate requirement is optional for those brokers or dealers that have material Year 2000 problems on or after August 31, 1999. The Commission, however, expects most brokers or dealers with material Year 2000 problems after August 31, 1999 to submit such certificates in order to continue performing certain functions. Thus, the aggregate burden for 59 broker-dealer respondents would be approximately 59 hours.

All notices and certificates filed under proposed Rule 15b7-3T will not be considered confidential and will be made available to the public so that customers and counterparties of those broker-dealers can assess the potential impact on them and take any appropriate action.

B. Rule 17a–9T

Proposed temporary Rule 17a-9T would require certain broker-dealers to make a separate copy of their trade blotter and their securities record or ledger for the last two business days of 1999. It would not require such broker-dealers to make any new records, but only to preserve a separate copy of an existing record. The records would be required to be kept in an easily accessible place for a period of not less than one year. The records required to be preserved would be considered confidential and would not be available to the public.

The Commission staff estimates that there are approximately 4,300 broker-dealers affected under the proposed rule.[61] The Commission staff estimates that each such broker-dealer would incur an average burden of approximately 0.5 hours to make and keep the records. The Commission staff estimates that the total aggregate burden under the proposed rule would be approximately 2,150 hours (4,300 brokers or dealers at 0.5 hours per broker or dealer).

C. Rule 17Ad–21T(c) and (e)

Proposed Rule 17Ad–21T(c) requires every non-bank registered transfer agent that has or is presumed to have a material Year 2000 problem at any time on or after August 31, 1999, to immediately notify the Commission of the problem. In addition, proposed Rule 17Ad–21T(e) permits such non-bank transfer agents to provide a certificate stating that they are in the process of remediating the Year 2000 problem, describing associated testing procedures, stating the date by which they expect to be operationally capable, and asserting that the existence of the Year 2000 problem will not impair their ability to carry out certain functions.

The Commission staff estimates that there would be approximately 6 non-bank transfer agents that would be affected under the proposed rule. The Commission staff estimates that there are approximately 600 non-bank transfer agents. Based on experience with the Year 2000 problem, the Commission staff estimates that approximately one percent of those non-bank transfer agents might be required to submit notices and may choose to submit certificates under the proposed rule. The Commission emphasizes the serious difficulty in estimating the number of non-bank transfer agents that will have material Year 2000 problems at some point in the future. The Commission expects that most non-bank transfer agents will not have such problems. The Commission staff also estimates that each respondent would, on average, submit one certificate and one notice under the proposed rule.

The Commission staff's estimates for burden hours associated with submitting notices and certificates are based on the Commission staff's experience with notices made pursuant to other Commission rules. The Commission staff estimates that each respondent submitting a notice of a material Year 2000 problem would incur an average burden of 0.5 hours. In addition, the Commission staff estimates that each respondent submitting a certificate would incur an average of 0.5 hours. The notice requirement of the proposed rule is mandatory for all non-bank transfer agents with a material Year 2000 problem on or after August 31, 1999. The certificate requirement is optional for those non-bank transfer agents that have material Year 2000 problems on or after August 31, 1999. The Commission, however, expects most non-bank transfer agents with material Year 2000 problems on or after August 31, 1999, to submit such certificates in order to continue performing certain functions. Thus, the Commission staff estimates that the annual aggregate burden for 6 non-bank transfer agent respondents would be 6 hours.

All notices and certificates filed under proposed Rule 17Ad–21T(c) and (e) will not be considered confidential and will be made available to the public so that customers of those non-bank transfer agents can assess the potential impact on them and take any appropriate action.

D. Rule 17Ad–21T(f)

Proposed Rule 17Ad–21T(f) would require registered non-bank transfer agents to maintain a separate copy of their database, file layouts and all relevant files in an easily accessible off–site location beginning August 31, 1999,

[61] The Commission staff estimates that there are approximately 8,000 registered broker-dealers. Only those broker-dealers that are required to maintain certain net capital pursuant to Rule 15c3–1(a)(2)(i), 17 CFR 240.15c3–1(a)(2)(i), would be required to comply with the proposed rule. The Commission staff estimates that approximately 3,700 broker-dealers would not be required to comply with the proposed temporary rule due to the net capital standard. Thus, the Commission staff estimates that approximately 4,300 registered broker-dealers would be required to comply with the proposed temporary rule.

and ending March 31, 2000. The proposed rule would require that such records are copied at the end of every business day and stored for five days on a rolling basis in a manner that will allow for the possible transfer and conversion to a transfer agent that is Year 2000 compliant.

The Commission staff estimates that there are approximately 600 non-bank transfer agents. Because these records will already exist and the proposed rule only requires non-bank transfer agents to make separate copies, the Commission staff estimates that non-bank transfer agents will incur a burden of 0.25 hours per business day to comply with the proposed recordkeeping requirement. Thus, the Commission staff estimates that the total burden for each non-bank transfer agent for the period between August 31, 1999, and March 31, 2000 would be approximately 38 hours (approximately 151 business days at 0.25 hours per business day). The Commission staff estimates that the aggregate burden for all non-bank transfer agents under the proposed rule would be approximately 22,800 hours (600 transfer agents at 38 hours per transfer agent).

The recordkeeping requirement would be mandatory for all non-bank transfer agents. The records required to be preserved would be considered confidential and would not be available to the public. The required records would be preserved for five business days after they are made.

E. Request for Comment

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to:

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, D.C. 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Mail Stop 0609, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609 with reference to File No. S7–8–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VIII. Statutory Basis

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 3(b), 15(b) and (c), 17, and 23(a) thereof [15 U.S.C. 78c(b), 78o(b) and (c), 78q and 78w(a)], the Commission proposes to adopt 240.15b7–2, 240.15b7–3T and 240.17a–9T of Title 17 of the Code of Federal Regulation in the manner set forth below. Pursuant to the Securities Exchange Act of 1934 and particularly Sections 17(a), 17A(d), and 23(a) thereof [15 U.S.C. 78q(a), 78q–1(d) and 78w(a)], the Commission proposes to adopt 240.17Ad–20 and 240.17Ad–21T of Title 17 of the Code of Federal Regulation in the manner set forth below.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4 and 80b-11, unless otherwise noted.

* * * * *

2. By adding § 240.15b7–2 to read as follows:

§ 240.15b7–2 Operational capability requirement.

(a) This section applies to every broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o). If you do not have the operational capability, taking into consideration the nature of your business, to assure the prompt and accurate order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities, you may not:

(1) Effect any transaction in securities;

(2) Induce the purchase or sale of securities;

(3) Receive or hold customer funds or securities; or

(4) Carry customer accounts.

(b) For the purposes of this section, the term *customer* includes a broker or dealer.

3. By adding § 240.15b7–3T to read as follows:

§ 240.15b7–3T Operational capability in a year 2000 environment.

(a) This section applies to every broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o). If you have a material Year 2000 problem, then you do not have operational capability within the meaning of § 240.15b7–2.

(b)(1) You have a material Year 2000 problem under paragraph (a) of this section if, at any time on or after August 31, 1999:

(i) Any of your computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical computer systems.

(2) You will be presumed to have a material Year 2000 problem (and will therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures designed to identify, assess, and remediate any Year 2000 problems in your mission critical systems;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of your mission critical systems;

(iii) Have not verified your Year 2000 remediation efforts by satisfying any applicable Year 2000 testing requirements imposed by a self-regulatory organization; or

(iv) Have not remediated all exceptions contained in any public independent accountant's report prepared on your behalf pursuant to § 240.17a–5(e)(5)(vi).

(c) If you experience, detect, or continue to have, or are presumed to have, a material Year 2000 problem at any time on or after August 31, 1999, you must immediately notify the Commission and your designated examining authority of the problem. You must send this notice to the Commission by overnight delivery to the Secretary, Mail Stop 0609, U.S.

Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

(d) If you are a broker or dealer that is not operationally capable because you have a material Year 2000 problem, then you may not, on or after August 31, 1999:

(1) Effect any transaction in, or induce the purchase or sale of, any security; or

(2) Receive or hold customer funds or securities, or carry customer accounts.

(e)(1) If you are a broker or dealer that is not operationally capable because you have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(i) You are in the process of remediating your material Year 2000 problem;

(ii) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(iii) The date (which cannot be later than October 15, 1999) by which you anticipate completing remediation of the Year 2000 problem and will therefore be operationally capable; and

(iv) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem will impair your ability, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, or the delivery of funds and securities.

(2) Notwithstanding paragraph (d) of this section, if you have submitted a certificate to the Commission in compliance with paragraph (e)(1) of this section, you may do the following, but only until the date specified in your certificate and in no event later than October 15, 1999:

(i) Continue to effect transactions in securities;

(ii) Induce the purchase or sale of securities;

(iii) Continue to receive or hold customer funds or securities, and

(iv) Carry customer accounts.

(3) Notwithstanding paragraph (e)(2) of this section, you must comply with the requirements of paragraph (d) of this section if you have been so ordered by the Commission or by a court as being in the public interest or for the protection of investors.

(f) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to ensure prompt and accurate processing of securities transactions, including order entry, execution, comparison, allocation, clearance and settlement of securities transactions, the maintenance of customer accounts, and the delivery of funds and securities; and

(2) The term *customer* includes a broker or dealer.

4. By adding § 240.17a–9T to read as follows:

§ 240.17a–9T Records to be made and retained by certain exchange members, brokers and dealers.

This section applies to every member, broker or dealer registered pursuant to Section 15 of the Act, (15 U.S.C. 78o), that is required to maintain, as of December 30 and December 31, 1999, minimum net capital of $250,000 pursuant to § 240.15c3–1(a)(2)(i).

(a) You must make and preserve, as of the close of business December 30 and December 31, 1999, a separate trade blotter pursuant to § 240.17a–3(a)(1) and a separate stock record pursuant to § 240.17a–3(a)(5). If the stock record reflects both trade date and settlement date positions, then you do not have to make and preserve a separate trade blotter.

(b) You must preserve these records in an easily accessible place for at least one year.

(c) You may preserve these records on any micrographic or electronic storage media that meets the requirements § 240.17a–4(f), but you must be able to immediately produce or reproduce them.

(d) You must furnish promptly to a representative of the Commission such legible, true and complete copies of those records, as may be requested.

5. By adding § 240.17Ad–20 to read as follows:

§ 240.17Ad–20 Operational capability requirement.

This section applies to every registered transfer agent. If you do not have the operational capability, taking into consideration the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records, you may not engage in any transfer agent function, including:

(a) Countersigning such securities upon issuance;

(b) Monitoring the issuance of such securities with a view to preventing unauthorized issuance;

(c) Registering the transfer of such securities;

(d) Exchanging or converting such securities; or

(e) Transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.

6. By adding § 240.17Ad–21T to read as follows:

§ 240.17Ad–21T Operational capability in a year 2000 environment.

(a) This section applies to every registered non-bank transfer agent. If you have a material Year 2000 problem, then you do not have operational capability within the meaning of § 240.17Ad–20.

(b)(1) You have a material Year 2000 problem under paragraph (a) of this section if, at any time on or after August 31, 1999:

(i) Any of your computer systems incorrectly identifies any date in the Year 1999, the Year 2000, or in any year thereafter; and

(ii) The error impairs or, if uncorrected, is likely to impair, any of your mission critical computer systems.

(2) You will be presumed to have a material Year 2000 problem (and will therefore be presumed to not be operationally capable) if, at any time on or after August 31, 1999, you:

(i) Do not have written procedures designed to identify, assess, and remediate any Year 2000 problems in your mission critical systems;

(ii) Have not verified your Year 2000 remediation efforts through reasonable internal testing of your mission critical systems and reasonable testing of your external links; or

(iii) Have not remediated all exceptions contained in any public independent accountant's report prepared on your behalf pursuant to § 240.17Ad–18(f).

(c) If you experience, detect, or continue to have, or are presumed to have, a material Year 2000 problem at any time on or after August 31, 1999, you must immediately notify the Commission of the problem. You must send this notice to the Commission by overnight delivery to the Secretary, Mail Stop 0609, U.S. Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609.

(d) If you are a registered non-bank transfer agent that is not operationally capable because you have a material Year 2000 problem, then you may not, on or after August 31, 1999, engage in any transfer agent function, including:

(1) Countersigning such securities upon issuance;

(2) Monitoring the issuance of such securities with a view to preventing unauthorized issuance;

(3) Registering the transfer of such securities;

(4) Exchanging or converting such securities; or

(5) Transferring record ownership of securities by book-keeping entry without physical issuance of securities certificates.

(e)(1) If you are a registered non-bank transfer agent that is not operationally capable because you have a material Year 2000 problem, you may, in addition to providing the Commission the notice required by paragraph (c) of this section, provide the Commission a certificate signed by your chief executive officer (or an individual with similar authority) stating:

(i) You are in the process of remediating your material Year 2000 problem;

(ii) You have scheduled testing of your affected mission critical systems to verify that the material Year 2000 problem has been remediated, and specify the testing dates;

(iii) The date (which cannot be later than October 15, 1999) by which you anticipate completing remediation of the Year 2000 problem and will therefore be operationally capable; and

(iv) Based on inquiries and to the best of the chief executive officer's knowledge, you do not anticipate that the existence of the material Year 2000 problem will impair your ability, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, or the production and retention of required records.

(2) Notwithstanding paragraph (d) of this section, you may continue to engage in transfer agent functions, if you have submitted a certificate to the Commission in compliance with paragraph (e)(1) of this section but only until the date specified in your certificate and in no event later than October 15, 1999. However, you must comply with the requirements of paragraph (d) of this section if you have been so ordered by the Commission or by a court as being in the public interest or for the protection of investors.

(f) You must maintain a back-up copy of your database and file layouts for each business day, and you must store these records for five business days in a place easily accessible to Commission examiners beginning August 31, 1999, and ending March 31, 2000. This back-up copy of the database and file layouts must not be located with or held in the same computer system as the primary records. You may store these records on any electronic storage media.

(g) For the purposes of this section:

(1) The term *mission critical system* means any system that is necessary, depending on the nature of your business, to assure the prompt and accurate transfer and processing of securities, the maintenance of master securityholder files, and the production and retention of required records as described in paragraph (d) of this section;

(2) The term *customer* includes an issuer, transfer agent, or other person for which you provide transfer agent services;

(3) The term *registered non-bank transfer agent* means a transfer agent, whose appropriate regulatory agency is the Commission and not the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation; and

(4) The term *file layout* means the description and location of information contained in the database.

Dated: March 5, 1999.

By the Commission.

Margaret H.McFarland,

Deputy Secretary.

[FR Doc. 99–6043 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 167

[USCS–1999–5198]

Port Access Route Study for Approaches to Los Angeles and Long Beach

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: The Coast Guard is conducting a study of port-access routes for the approaches to Los Angeles and Long Beach. The study will evaluate potential effects of recent port improvement projects on navigational safety and vessel traffic management efficiency in the study area and may recommend changes to existing vessel routing measures. The recommendations of the study may lead to future rulemaking. The Coast Guard asks for comments on the issued raised and questions listed in this document.

DATES: Comments must be received on or before May 10, 1999.

ADDRESSES: You may mail your comments to the Docket Management Facility, (USCG–1999–5198), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington DC 20590–0001, or deliver them to room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

The Docket Management Facility maintains the public docket. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also access this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Lieutenant Brian Tetreault, Vessel Traffic Management Officer, Eleventh Coast Guard District, telephone 510–437–2951; or Mike Van Houten, Aids to Navigation Section Chief, Eleventh Coast Guard District, telephone 510–437–2968. For questions on viewing, or submitting material to the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to respond to this notice by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this notice (USCG–1999–5198) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ inches by 11 inches, suitable for copying and electronic filing to the Docket Management Facility at the address under **ADDRESSES.** Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period.

The Coast Guard does not plan to hold a public meeting. Persons may request a public meeting by writing to the Docket Management Facility at the address under **ADDRESSES.** The request should include the reasons why a meeting would be beneficial. If we determine that the opportunity for oral

presentations will aid this study, we will hold a public meeting at a time and place announced in a later notice of the **Federal Register.**

Definitions

The following International Maritime Organization (IMO) definition should help you review this notice and provide comments:

1. *Internationally recognized vessel routing system* means any system of one or more routes or routing measures aimed at reducing the risk of casualties; it includes traffic separation schemes, two-way routes, recommended tracks, areas to be avoided, inshore traffic zones, roundabouts, precautionary areas, and deep-water routes.

2. *Traffic Separation Scheme* or *(TSS)* means a routing measure aimed at the separation of opposing streams of traffic by appropriate means and by the establishment of traffic lanes.

3. *Traffic lane* means an area within defined limits in which one-way traffic is established.

4. *Separation zone or line* means a zone or line separating the traffic lanes in which ships are proceeding in opposite or nearly opposite directions; or separating a traffic lane from the adjacent sea area; or separating traffic lanes designated for particular classes of ships proceeding in the same direction.

5. *Precautionary area* means a routing measure comprising an area within defined limits where ships must navigate with particular caution and within which the direction of traffic flow may be recommended.

6. *Inshore traffic zone* means a routing measure comprising a designated area between the landward boundary of a traffic separation scheme and the adjacent coast, to be used in accordance with the provision of Rule 10(d), as amended, of the International Regulations for Preventing Collisions at Sea, 1972 (Collision Regulations).

7. *Deep-water route* means a route within defined limits which has been accurately surveyed for clearance of sea bottom and submerged obstacles as indicated on nautical charts.

Background and Purpose

Port Access Route Studs Requirements. Under the Ports and Waterways Safety Act (PWSA) [33 U.S.C. 1223(c)], the Secretary of Transportation may designate necessary fairways and Traffic Separation Schemes (TSS's) to provide safe access routes for vessels proceeding to and from U.S. ports. The Secretary delegated this authority to the Commandant, U.S. Coast Guard, in Title 49 of the Code of Federal Regulations (CFR) § 1.46. The designation of fairways and TSS's recognizes the paramount right of navigation over all other uses in the designate areas.

The PWSA requires the Coast Guard to conduct a study of port-access routes before establishing or adjusting fairways or TSS's. Through the study process, we must coordinate with Federal, State, and foreign state agencies (as appropriate) and consider the views of maritime community representatives, environmental groups, and other interested stakeholders. A primary purpose of this coordination is, to the extent practicable, to reconcile the need for safe port-access routes with other reasonable waterway uses.

Previous port access route studies. The Coast Guard announced an initial port access route study for the coast of California, including Los Angeles/Long Beach, in the **Federal Register** on June 24, 1982 (47 FR 27430). The study recommended establishing a shipping safety fairway overlaying the Los Angeles/Long Beach precautionary area. This recommendation has not been implemented.

The Coast Guard announced another port access route study for the coast of California in the **Federal Register** on August 24,1 993 (58 FR 44634). this study evaluated the effects of oil tanker transits through the Monterey Bay National Marine Sanctuary and the adequacy of vessel traffic management measures along the California cost from San Francisco to Los Angeles. The Coast Guard published study results in the **Federal Register** on October 25,1996 (62 FR 55249). The study did not recommend any changes to the Los Angeles/Long Beach TSS at that time.

Why is a new port access route study necessary? A study of port-access routes is needed to evaluate the potential effects of port improvement projects on navigational safety and vessel traffic management efficiency and recommend changes, if necessary, to existing routing measures.

The ports of Los Angeles and Long Beach began major port improvement projects in 1995. These projects should be completed soon (Long Breach—June 1999; Los Angeles—January 2000).

Port improvements include the following:

- Lengthening of the Los Angeles Approach Channel to extend 3.5 nautical miles beyond the Los Angeles breakwater.
- Deepening of the Los Angeles Approach Channel to a project depth of 81 feet.
- Slight eastward shift of the Long Beach Approach to a 355-degree true inbound course.
- Deepening of the Long Beach Approach Channel to a project depth of 69 feet.

Timeline, Study Area, and process of the new port access route study. The Coast Guard will begin the study immediately and should complete it by mid-May 1999.

The study area includes the navigable waters of Los Angeles, and Long Beach Harbors, the Los Angeles/Long Beach TSS and all waters bound by the coastline and the following coordinates:

Latitude	*Longitude*
33°–47.00′ N	118°–25.40′ W
33°–47.00′ N	118°–38.60′ W
33°–15.50′ N	118°–38.60′ W
33°–15.50′ N	117°–52.70′ W
33°–35.30′ N	117′–52.70′ W

During the study, we will consult with Federal and State agencies and will consider the views of representatives of the maritime community, port and harbor authorities or associations, environmental groups and other interested parties. We will also consider previous studies and experience in the areas of vessel traffic management, navigation, ship handling, and the effects of weather, and review prior analyses of the traffic density. We encourage you to participate in the study process by submitting comments in response to this notice.

We will publish the results of this port access route study in the **Federal Register**. It is possible that the study may validate continued applicability of existing vessel routing measures and conclude that no changes are necessary. It is also possible that the study may recommend one or more changes to enhance navigational safety and vessel traffic management efficiency. Study recommendations may lead to future rulemaking.

Questions

To help us conduct the port access route study, we request comments on the following questions, although comments on related issues under the broad category of vessel routing are welcome.

1. What navigational hazards do vessels operating in the study area face? Please describe (consider issues such as port and waterway configurations, variations in local geography, climate, and other similar factors). Will there be additional navigational hazards once port improvement projects are completed? If so, please describe.

2. Are there strains on the current vessel routing system (increasing traffic density, for example)? If so, please describe. Will there be additional strains once port improvement projects are

completed? (We are particularly interested in information on vessel characteristics and trends, including traffic volume, the size and types of vessels involved, potential interference with the flow of commercial traffic, the presence of any unusual cargoes, etc.).

3. Are modifications to existing vessel routing measures needed to address existing or future hazards and strains and improve traffic management efficiency in the study area? If so, please describe. What positive and negative impacts would changes to existing routing measures or new routing measures have on the study area (consider proximity of fishing grounds, oil and gas drilling and production operations, environmental impact, affect on local practices, or any other potential or actual conflicting activity)?

4. Do you have any specific recommendations regarding aids to navigation design for the lengthened approach channels? If so, please describe.

Dated: March 4, 1999.

R.C. North,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–6015 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE041–1019b; FRL–6238–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware—Definitions of VOCs and Exempt Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of revisions to the Delaware State Implementation Plan (SIP). The revisions amend the definitions of the terms ''volatile organic compounds'' (VOCs) and ''exempt compounds.'' EPA is proposing to approve these revisions because they make Delaware's definitions consistent with the federal definition of VOCs. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by April 12, 1999.

ADDRESSES: Written comments should be addressed to David L. Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: Rose Quinto, (215) 814–2182, at the EPA Region III address above, or by e-mail at quinto.rose@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action with the same title that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: February 25, 1999.

Thomas J. Maslany,

Acting Regional Administrator, Region III.

[FR Doc. 99–5664 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 058–1058b; FRL–6308–4]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the state of Iowa pertaining to a sulfur dioxide (SO_2) control strategy for the Cedar Rapids, Iowa, area. Approval of this SIP revision will make Federally enforceable source emission reduction requirements and achieve attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS).

In the final rules section of the **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If the EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting should do so at this time.

DATES: Comments must be received in writing by April 12, 1999.

ADDRESSES: Comments may be mailed to Wayne Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: February 25, 1999.

Diane K. Callier,

Acting Regional Administrator, Region VII.

[FR Doc. 99–5825 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 428

RIN 1006–AA38

Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land

AGENCY: Bureau of Reclamation, DOI.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: The Bureau of Reclamation is reopening the comment period on our proposed rule entitled ''Information Requirements for Certain Farm Operations In Excess of 960 Acres and the Eligibility of Certain Formerly Excess Land.''

DATES: We must receive your comments at the address below on or before April 12, 1999.

ADDRESSES: If you wish to comment, you may submit your comments by any one of several methods. You may mail comments to: Administrative Record, Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240. You may also comment via the Internet to epetacchi@usbr.gov (see Public Comment Procedures under **SUPPLEMENTARY INFORMATION** in the November 18, 1998, notice at 63 FR 64154). In addition, you may hand-deliver comments to Commissioner's Office, Bureau of Reclamation, 1849 C Street N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Erica Petacchi, (202) 208–3368, or Richard Rizzi, (303) 445–2900.

SUPPLEMENTARY INFORMATION: We originally published the proposed rule on November 18, 1998, at 63 FR 64154–64165. We asked for public comments until January 19, 1999, but because several people requested an extension of that deadline, we accepted comments until February 18, 1999. After the close of the extended comment period, we again received requests for an extension. We are now reopening the comment period for an additional 30 days.

In the proposed rule, we asked for comments on the proposal to collect information from certain farm operators. We published an additional notice in the January 4, 1999, issue of the **Federal Register** (64 FR 174) to collect comments on this proposal, in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). While the comment period on the Reclamation Reform Act of 1982 forms in general closes on March 5, 1999, we will continue to accept comments specific to the proposed information collection for farm operators and the possible new form that we have developed as part of the comment period on the proposed rule that now closes on April 12, 1999.

You can find a full description of the information collection proposal for farm operators in either the Paperwork Reduction Act statement in the preamble of the proposed rule, at 63 FR 64163; or in the separate **Federal Register** notice mentioned above, at 64 FR 174.

Dated: March 8, 1999.

Patricia J. Beneke,

Assistant Secretary—Water and Science.

[FR Doc. 99–6066 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3400 and 3420

[WO–320–3420–24 1A]

RIN 1004–AD27

Public Participation in Coal Leasing

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Land Management (BLM) is proposing this rule as a result of a settlement agreement and the passage of a new law. In the settlement agreement, BLM agreed to establish, by regulation, the points where the public may participate in the regional coal leasing process. This proposed rule would also amend the regulations to conform to statutory changes made by the Unfunded Mandates Reform Act of 1995 which exempted several types of meetings from Federal Advisory Committee Act requirements. BLM is proposing that Regional Coal Team meetings are no longer subject to the Federal Advisory Committee Act under the new law. The proposed changes do not substantially alter current BLM policy on public participation in coal leasing, they simply establish that policy by regulation.

DATES: You should submit your comments by May 10, 1999. BLM may not consider comments postmarked or received by electronic mail after the above date in the decision-making process on the final rule.

ADDRESSES: You may hand-deliver comments to Bureau of Land Management, Administrative Record, Room 401, 1620 L St., N.W., Washington, D.C., or mail comments to Bureau of Land Management, Administrative Record, Room 401LS, 1849 C St., N.W., Washington, D.C. 20240. You may also transmit comments electronically to WOComment@wo.blm.gov; in that case please submit comments as an ASCII file to minimize computer problems, and please include ''attn.:AD27.'' If you do not receive confirmation from the system that we received your Internet message, contact us directly.

FOR FURTHER INFORMATION CONTACT: Philip Allard, Solid Minerals Group, (202) 452–5195. For assistance in reaching the above contact, individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

How do I comment on the proposed rule?

Please submit your comments on the proposed rule in writing. Please confine your comments to issues related to the proposed rule and explain the need for any changes you recommend. Where possible, your comment should refer to the specific section or paragraph of the proposal you are addressing.

Will my comments be available to others?

Yes. BLM will make your comments, including your name and address, available for public review at the ''L Street'' address listed in **ADDRESSES** above during regular business hours (7:45 a.m. to 4:15 p.m., Monday through Friday, except Federal holidays). BLM will also post all comments on its home page (http://www.blm.gov) at the end of the comment period.

Can BLM keep my identity confidential?

Yes, under certain conditions BLM can keep your personal information confidential. You must request confidentiality and prominently state your request at the beginning of your comment. BLM will consider withholding your name, street address, and other identifying information on a case-by-case basis to the extent allowed by law.

BLM will make publically available all submissions from organizations and businesses and from individuals identifying themselves as representatives or officials of organizations or businesses.

II. Background

Why are we proposing to change the coal leasing regulations?

BLM is proposing this rule for two reasons: to respond to a settlement agreement entered into in July 1997 and to respond to a new law passed in March 1995.

What was the settlement agreement about?

The Department of the Interior's coal leasing regulations were challenged in a lawsuit, *Natural Resources Defense Council, Inc., et al.* v. *Jamison, et al.*, Civil No. 82–2763 (D. D.C.). In December 1992, the court decided that

the Department had not complied with section 202(f) of the Federal Land Policy and Management Act, 43 U.S.C. 1712(f). The court held that although BLM's competitive leasing handbook describes public participation procedures, the Department should establish these procedures by regulation. During appeal of this decision, the parties negotiated to settle the case. In July 1997, the Department and the plaintiffs entered into a settlement agreement. Civil No. 82–2763 (D. C. Circuit No. 93–5029).

In the settlement, the Department agreed to propose a rule identifying the points where the public may participate in coal leasing decisions. Since BLM already provides this information in its competitive leasing handbook, this proposed rule does not substantially alter public participation opportunities in competitive leasing. Specific points of public participation are discussed in the ''Discussion of Proposed Rule'' section below.

What is the new law about?

On March 22, 1995, Congress passed the Unfunded Mandates Reform Act. Section 204(b) of this law (2 U.S.C. 1534) states that the requirements under another law, the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix 1, do not apply to intergovernmental communications when:

- The meetings are exclusively between Federal officials and elected officers of State, local and tribal governments or their representatives, and
- The meetings are only to exchange views, information, or advice relating to Federal programs that share intergovernmental responsibilities.

The Solicitor's Office of the Department of the Interior determined that these provisions exempt Regional Coal Teams (RCTs) from the requirements of FACA. Because existing regulations at subpart 3400 incorporate FACA regulations at subpart 1784, the proposed rule amends that reference and clarifies which portion of the FACA regulations apply to RCTs.

How does BLM lease coal?

BLM primarily offers coal for lease competitively. There are two types of competitive leasing, ''regional coal leasing'' and ''leasing-on-application.''

What is regional coal leasing?

The Department of the Interior initiates the regional coal leasing process. Based on consideration of the demand for Federal coal, national energy needs, and other factors, BLM must determine whether to offer Federal coal lands for lease and which coal to offer. Since issues surrounding coal leasing can vary greatly from region to region, Federal coal production regions assist BLM in this determination by grouping together areas with similar issues.

What are Federal coal production regions?

BLM has divided coal deposits into broad blocks of Federally owned coal called Federal coal production regions. There are six Federal coal production regions, principally located in the western United States. The Federal coal production regions are:

- The Southern Appalachian Region, in northwestern Alabama,
- The Fort Union Region of eastern Montana and western North Dakota,
- The Green River-Hams Fork Region of northwestern Colorado and southern Wyoming,
- The Powder River Region of northeastern Wyoming and southeastern Montana,
- The San Juan Region of northwestern New Mexico and southwestern Colorado, and
- The Uinta-Southwestern Utah Region of eastern Utah and western Colorado.

What are regional coal teams?

RCTs are composed of BLM employees and State Governors or their designees in the states where the coal tracts are located. The RCTs recommend the leasing level, a target amount of coal that BLM may offer for sale, and the lease sale schedule to the BLM Director. The BLM Director makes recommendations to the Secretary of the Interior. The Secretary makes the final decision on leasing levels and a lease sale schedule, taking into account recommendations from:

- The BLM Director,
- The RCT,
- The State Governors, and
- Other interested and affected groups, including members of the general public.

How do we conduct the regional coal leasing process?

First, BLM begins the process by creating a land use plan, in which BLM-managed lands are reviewed to determine, among many factors, the presence or absence of:

- Coal,
- Other resources that might preclude developing the coal,
- Other uses for the land that might be preferable to coal development, and
- Any qualified surface owners who oppose or favor coal development.

This review allows BLM to identify the land that is acceptable for further consideration for coal leasing.

Second, the Secretary sets the leasing level for the region after considering the land use plan, the amount of leasing interest in the region, national energy needs, and other factors.

Third, BLM initiates ''regional coal activity planning,'' during which BLM prepares environmental documents that analyze one or more combinations of tracts that equal the leasing level and alternative combinations of tracts.

Finally, the Secretary determines the lease sale schedule based on the environmental analysis and public comments and comments from State Governors, tribal governments, and other Federal agencies. The schedule includes the number of tracts that will be offered for lease and the timing of the lease sales.

What is leasing-on-application?

The leasing-on-application process is one which individuals or companies initiate, unlike regional coal leasing which is government initiated.

How do we conduct the leasing-on-application process?

Under this method of competitive leasing, an individual or company takes the first step by applying for a particular coal deposit. Two major differences from regional coal leasing are:

- There is no need to establish a leasing level because the amount of coal applied for provides a starting point for the amount of coal to be analyzed; and
- There is no leasing schedule because BLM usually offers coal tracts based on at most one or two applications in leasing-on-application lease sales.

The RCT located in the applicable coal production region may review the applications and may make whatever recommendations it believes are appropriate on the coal tracts. For a number of years, BLM has competitively leased Federal coal exclusively through the leasing-on-application process as it meets current demand for new coal leases.

III. Discussion of Proposed Rule

How would RCT meetings change under the proposed rule?

This proposed rule would not substantially change RCT meetings. Section 204(b) of the Unfunded Mandates Reform Act identifies several types of meetings exempt from FACA. FACA requires that committees that advise the Secretary on particular issues follow certain procedures, including

those involving public participation. Although RCT meetings are now exempt from FACA requirements under the Unfunded Mandates Reform Act, BLM will, nevertheless, continue to provide public participation opportunities identified in FACA at RCT meetings when BLM determines RCT involvement is appropriate.

This proposed rule would amend regulations at section 3400.4 by replacing a subsection that incorporates all of the FACA regulations in 43 CFR 1784 with a subsection that references only the public participation regulations in sections 1784.4–2, 1784.4–3 and the operating procedures described in section 1784.5 of FACA. Accordingly, when RCTs are involved, they will:

- Open meetings to the public,
- Provide a period during each meeting for public comments,
- Keep minutes of the meeting, and
- Publish notices of the meetings in the **Federal Register**, at least 30 calendar days before the meetings take place.

RCTs will continue to consider any public comments received when making recommendations to the Director, and the Director will forward public comments to the Secretary.

How would the competitive leasing process change under the proposed rule?

This proposed rule would not substantially alter the competitive leasing process since BLM policy would not change. Although BLM currently identifies public participation procedures in its competitive leasing handbook, BLM is proposing these procedures in its regulations to comply with the settlement agreement.

Subpart 3420 addresses competitive coal leasing. This proposed rule would adopt eight amendments to subpart 3420, as follows:

- BLM would add a cross reference to part 1600 where we describe the specific points when BLM provides public participation opportunities in our land-use planning process. These opportunities for public participation occur:

(1) at the initial identification of issues,

(2) during review of proposed planning criteria,

(3) during publication of the draft resource management plan and draft environmental impact statement,

(4) during publication of proposed resource management plans and final environmental impact statements (an opportunity also provided for protest), and

(5) when significant changes are made as a result of a protest.

- BLM would include public comments as one of the factors that the State Director would consider in recommending an initial leasing level to the Secretary.
- BLM would include public comments, as well as comments from the State Governors, in the package the Secretary considers when determining a regional leasing level. In addition to the package of comments, BLM or other staff may also develop a summary that assists the Secretary in reviewing the comments.
- BLM would add public comments to the list of factors that the Secretary considers in reaching a decision about regional coal leasing levels.
- BLM would add a list of the points during regional activity planning when the public may participate. Regional activity planning starts when the Secretary makes the leasing level decision and ends when the Secretary determines the lease sale schedule.
- BLM would change provisions on RCTS by:

(1) allowing the public to comment on all subfactors that the RCTs used to rank coal tracts for possible leasing,

(2) requiring BLM to publish, at least 45 days before the meeting, the notice of the RCT meeting at which tracts would be ranked,

(3) requiring BLM to give the public at least 60 days to comment on the draft regional coal leasing environmental impact statement (EIS),

(4) requiring the RCTs to include all public comments received in the final EIS,

(5) requiring the RCTs to consider public comments when revising tract ranking and selection.

- BLM would give the public 45 days prior notice of a RCT meeting when the team will recommend specific tracts for coal lease sale.
- BLM would give the public notice of and an opportunity to comment on any revisions to a lease sale schedule increasing the number or frequency of sales or increasing the amount of coal to be offered.

How would the lease sales process change under the proposed rule?

The proposed rule would not substantially alter the lease sales process since BLM already identifies public participation procedures in its competitive leasing handbook.

Subpart 3422 describes the procedures that BLM follows once the Secretary of the Interior determines what the lease sale schedule will be. Presently, BLM requests public comments on the fair market value and the maximum economic recovery for the tracts to be offered. The proposed rule adds two new requirements to subpart 3422:

- The regulations at section 3422.1(a) would require BLM to publish our request for public comments on fair market value and maximum economic recovery in the **Federal Register** and for two consecutive weeks in a newspaper of general circulation in the area where the proposed sale would be held.
- A new requirement in section 3422.2(a) would have BLM send the lease sale notice to any person or group requesting notices of sales to be held in the area.

How would the leasing-on-application process change under the proposed rule?

The proposed rule does not substantially change the leasing-on-application process. BLM currently identifies public participation procedures in its competitive leasing handbook and is proposing them for its regulations in response to the settlement agreement.

Subpart 3425 describes the procedures that BLM uses to process applications for coal lease sales. Presently, the lease-on-application process is similar to the regional leasing process. We must screen the tract during land-use planning. Screening the tract can involve applying unsuitability criteria, identifying and consulting with any qualified surface owners, and considering alternative land uses. In addition, we must assess the environmental impacts of coal development before the coal can be offered for lease sale. The proposed rule makes two amendments to this subpart:

- The proposed rule would amend the regulations at section 3425.1–9 requiring BLM to ask for and consider public comments on any modification to the boundaries of a lease tract.
- The proposed rule would amend the regulations at § 3425.3. The proposal would require BLM to publish a notice of availability for a draft EIS in the **Federal Register** and in a general circulation newspaper. We would also announce any hearings on the draft EIS through similar publication.

IV. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This proposed regulation is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. We have

determined that this proposed regulation does not: have an annual economic impact of $100 million or more; have an adverse impact in a material way on the economy, environment, public health, safety, other units of government, or sectors of the economy; pose a serious inconsistency or interfere with an action taken or planned by another agency; have novel legal or policy implications; or have material effects on budgets or rights and obligations of recipients of entitlements, fees, grants, or loans. Therefore, we do not have to assess the potential costs and benefits of the rule under section 6(a)(3) of this order and no OMB review under the order is required.

Executive Order 12866 also requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to the following questions:

- Are the requirements in the proposed rule clearly stated?
- Does the proposed rule contain unclear technical language or jargon?
- Does the format of the proposed rule aid or reduce its clarity?
- Would the rule be easier to understand if it were divided into more sections? and
- Is the description of the proposed rule in the ''supplementary information'' section helpful in understanding the proposed rule?

Send comments that concern how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C St., N.W., Washington, D. C. 20240. You may also e-mail the comments to: Execsec@ios.doi.gov.

National Environmental Policy Act.

This proposed regulation is not a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C). The proposed changes do not directly affect the environment. Any coal tract considered for leasing will be subject to further NEPA analysis on a case-by-case basis.

Regulatory Flexibility Act

This proposed regulation does not require a regulatory flexibility analysis. Congress enacted the Regulatory Flexibility Act of 1980 (RFA), as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. This proposed regulation would not have significant economic impacts on small entities under the RFA, 5 U.S.C. 601 *et seq.* Small entities would be neither adversely nor beneficially affected by the proposals but would be given the opportunity to participate in the coal leasing process by regulation, rather than by internal agency guidance.

Small Business Regulatory Enforcement Fairness Act

These proposed regulations are not a ''major rule'' as defined by the Small Business Regulatory Enforcement Fairness Act, 5 U.S.C. 804(2). The rule will not have a significant impact on the economy, or on small businesses in particular. As discussed above, this rule proposed rule would not substantially change BLM's existing policy.

Unfunded Mandates Reform Act

This proposed regulation does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year. This proposed regulation does not have a significant or unique effect on State, local, or tribal governments or the private sector. Current BLM policy on public participation in the coal leasing process is simply being put into regulatory form. Therefore, we are not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act, 2 U.S.C. 1531 *et seq.*

Executive Order 12630, Takings

The proposed regulation does not represent a government action capable of interfering with constitutionally protected property rights. Therefore, we have determined that the regulation would not cause a taking of private property. No further discussion of takings implications is required under this Executive Order.

Executive Order 12612, Federalism

This proposed regulation will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The Federal Coal Management Program was designed to allow the maximum participation of affected States in decisions about coal leasing and development through RCTs. RCTs make recommendations to the Secretary on the level of coal analyzed for possible sale and on the amount of coal offered. If the Secretary does not accept their decisions, the Secretary must publicly state why. We have determined that this proposed regulation does not have sufficient Federalism implications to warrant preparation of a Federalism assessment.

Executive Order 12988, Civil Justice Reform

The Office of the Solicitor has determined that this proposed regulation will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This regulation does not require an information collection under the Paperwork Reduction Act. The information collection is not covered by an existing OMB approval. An OMB form 83–I has not been prepared and has not been approved by the Office of Policy Analysis. This regulation qualifies for exemption from OMB approval under exemption four of OMB guidance.

The principal author of this proposed rule is Philip Allard, Solid Minerals Group, assisted by Carole Smith and Janet Lin, Regulatory Affairs Group.

List of Subjects

43 CFR Part 3400

Coal, Intergovernmental relations, Mines, Public lands—classification, Public lands—mineral resources.

43 CFR Part 3420

Administrative practice and procedure, Coal, Environmental protection, Intergovernmental relations, Mines, Public lands—mineral resources.

Dated: February 12, 1999.

Sylvia V. Baca,

Acting Assistant Secretary, Land and Minerals Management.

For the reasons set forth in the preamble and under the authority of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 *et seq.*), the Mineral Leasing Act for Acquired Lands, as amended (30 U.S.C. 351–9), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1740), and the Secretary's enforcement powers, BLM proposes to amend parts 3400 and 3420 of Title 43 of the Code of Federal Regulations as set forth below:

PART 3400—COAL MANAGEMENT: GENERAL

1. The authority citation for part 3400 continues to read as follows:

Authority: 30 U.S.C. 189, 359, 1211, 1251, 1266, and 1273; 43 U.S.C. 1461, 1733, and 1740.

2. Amend § 3400.4 by revising paragraph (g) to read:

§ 3400.4 Federal/state government cooperation.

* * * * *

(g) The regional coal team will function under the public participation procedures at §§ 1784.4–2 and 1784.4–3 and 1784.5 of this chapter.

3. The authority citation for part 3420 continues to read as follows:

Authority: The Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 et seq.), the Mineral Leasing Act for Acquired Lands of 1947, as amended (30 U.S.C. 351–359), the Multiple Mineral Development Act of 1954 (30 U.S.C. 521–531 et seq.), the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), the Department of Energy Organization Act of 1977 (42 U.S.C. 7101 et seq.), the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and the Small Business Act of 1953, as mended (15 U.S.C. 631 et seq.).

PART 3420—COMPETITIVE LEASING

4. Amend § 3420.1–4 by revising paragraph (a) to read:

§ 3420.1–4 General requirements for land use planning.

(a) The Secretary may not hold a lease sale under this part unless the lands containing the coal deposits are included in a comprehensive land use plan or land use analysis. The land use plan or land use analysis will be conducted with public notice and opportunity for participation at the points specified in § 1610.2(f) of this title. The sale must be compatible with, and subject to, any relevant stipulations, guidelines and standards set out in that plan or analysis.

* * * * *

5. Amend § 3420.2 by removing the last sentence of paragraph (a)(1), and adding in its place 2 sentences as set forth below, revising the last sentence of paragraph (a)(4), removing ''and'' from the end of paragraph (c)(8), redesignating current paragraph (c)(9) as paragraph (c)(10), and adding a new paragraph (c)(9) to read:

§ 3420.2 Regional leasing levels.

(a)(1) * * * This range of initial leasing levels must be based on information available to the State Director including: land use planning data; the results of the call for coal resource information held under § 3420.1–2 of this subpart; the results of the call for expressions of leasing interest held under § 3420.3–2 of this subpart; and other considerations. The State Director considers comments received from the public in writing and at hearings, and input and advice from the Governors of the affected States regarding assumptions, data, and other factors pertinent to the region;

* * * * *

(a)(4) * * * The team also must transmit to the Secretary, without change, all comments and recommendations of the Governor and the public.

* * * * *

(c) * * *

(9) Comments received from the public in writing and at public hearings; and

* * * * *

6. Amend § 3420.3–1 by adding a new paragraph (d) to read:

§ 3420.3–1 Area identification process.

* * * * *

(d) Public notice and opportunity for participation in activity planning must be appropriate to the area and the people involved. The Bureau of Land Management will make available a calendar listing of the points in the planning process at which the public may participate, including:

(1) The regional coal team meeting to recommend initial leasing levels (see § 3420.2(a)(4));

(2) The regional coal team meeting for tract ranking (see § 3420.3–4(a));

(3) Publication of the regional coal lease sale environmental impact statement (see § 3420.3–4(c)); and

(4) The regional coal team meeting to recommend specific tracts for a lease sale and a lease sale schedule (see § 3420.3–4(g).

7. Amend § 3420.3–4 by removing the third sentence in paragraph (a)(1), and adding in its place 4 sentences as set forth below, adding 2 sentences after the first sentence in paragraph (a)(5), adding a new sentence at the end of paragraph (d), revising paragraph (f), and removing the first sentence in paragraph (g) and adding in its place 2 new sentences as set forth below:

§ 3420.3–4 Regional tract ranking, selection, environmental analysis and scheduling.

(a)(1) * * * The subfactors the regional coal team will consider under each category are those the regional coal team determines are appropriate for that region. The regional coal team will make its determination after publishing notice in the **Federal Register** that the public has 30 days to comment on the subfactors. The regional coal team will then consider any comments it receives in determining the subfactors. BLM will publish the subfactors in the regional lease sale environmental impact statement required by this section.* * *

* * * * *

(5) * * * BLM will publish the notice no later than 45 days before the meeting. The notice will list potential topics for discussion.* * *

* * * * *

(d) * * * BLM will publish notice in the **Federal Register** of the 60-day comment period and the public hearing on the draft environmental impact statement for two consecutive weeks in a newspaper of general circulation in the area of the sale.

* * * * *

(f) When the comment period on the draft environmental impact statement closes, the regional coal team will analyze the comments and make any appropriate revisions in the tract ranking and selection. The final regional lease sale environmental impact statement will reflect such revisions and will include all comments received.

(g) When BLM completes and releases the final regional lease sale environmental impact statement, the regional coal team will meet and recommend specific tracts for lease sale and a lease sale schedule. The regional coal team will provide notice in the **Federal Register** of the date and location at least 45 days before its meeting.* * *

* * * * *

8. Amend § 3420.5–2 by adding 2 sentences after the first sentence in paragraph (a) to read:

§ 3420.5–2 Revision.

(a) * * * BLM will publish a notice in the **Federal Register** and provide a 30 day comment period before it makes any revision increasing the number or frequency of sales, or the amount of coal offered. BLM will publish any revision in the **Federal Register**.* * *

* * * * *

9. Amend § 3422.1 by adding a sentence after the first sentence in paragraph (a) to read:

§ 3422.1 Fair market value and maximum economic recovery.

(a) * * * BLM will publish the solicitation in the **Federal Register** and for two consecutive weeks, in a newspaper of general circulation in the area of the sale. * * *

* * * * *

10. Amend § 3422.2 by removing the third sentence in paragraph (a) and adding in its place 2 sentences to read as follows:

§ 3422.2 Notice of sale and detailed statement.

(a) * * * BLM will post notice of the sale in BLM State Office where the coal lands are managed. It will also mail notice to any surface owner of lands noticed for sale and to any other person who has requested notice of sales in the area. * * *

* * * * *

11. Amend § 3425.1–9 by adding a sentence at the end of this section to read:

§ 3425.1–9 Modification of application area.

* * * If an environmental assessment of the modification is required, BLM will solicit and consider public comments on the modified application.

12. Amend § 3425.3(a) by adding two sentences at the end of paragraph (a) to read:

§ 3425.3 Environmental analysis.

(a) * * * BLM will publish a notice in the **Federal Register** and for two consecutive weeks in a newspaper of general circulation in the area of the sale, announcing the availability of the environmental assessment or draft environmental impact statement and the hearing required by § 3425.4(a)(1). BLM also will mail to the surface owner of any lands to be offered for sale and to any person who has requested notice of sales in the area.

* * * * *

[FR Doc. 99–5334 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. RSPA–98–4868, Notice 1]

RIN 2137—AB15

Gas Gathering Line Definition

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Request for comments.

SUMMARY: This notice announces an electronic public discussion forum and subsequent written comment period on defining gas gathering lines for the purposes of pipeline safety regulation. In 1991, we proposed a definition of gas gathering. A change to the pipeline safety laws in 1992 requires us to revisit that proposal and to consider whether and to what extent we should regulate gathering lines in rural areas. This opportunity for public input will allow us to decide whether and how to modify the regulations. The comments may also inform the process when we consider development of a separate proposal on regulating gas gathering lines in rural areas.

DATES: Comments must be submitted on or before April 28, 1999. The electronic public discussion forum will commence on April 13, 1999, at 9:00 a.m. EST and end on May 5, 1999, at 4:30 p.m. EST.

ADDRESSES: The Internet address for the electronic discussion forum is http://ops.dot.gov/forum. Address written comments to the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the Docket No. RSPA–98–4868. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed, stamped postcard. Comments may be submitted by e-mail to rules@rspa.dot.gov.

The Dockets Management System is located on the Plaza Level of the Department of Transportation's Nassif Building at 400 Seventh Street, SW, Washington, DC. Public dockets may be reviewed in person between the hours of 10:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. In addition, the public may also review comments by accessing the Docket Management System's home page at http://dms.dot.gov. An electronic copy of any document may be downloaded from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: L.E. Herrick, (202) 366–5523, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION: The electronic public discussion forum will be held at the conferences and public meetings section of the Office of Pipeline Safety's Internet home page. The forum will allow near real-time electronic discussion of the rulemaking. We hope it will increase the breadth of participation in the commenting process. A transcript of the electronic discussion forum will be placed in the docket.

Issues for discussion: Segments of gathering lines in rural areas are excluded from the Federal pipeline safety regulations in 49 CFR Part 192. In these regulations the term ''gathering line'' is defined with reference to a ''transmission line'' or ''main'', a type of distribution line. The term ''transmission line'' is then defined with reference to a gathering line, and ''distribution line'' is defined with reference to a gathering or transmission line. Therefore under current regulations:

''Distribution line'' means a pipeline other than a gathering or transmission line.

''Gathering line'' means a pipeline that transports gas from a current production facility to a transmission line or main.

''Transmission line'' means a pipeline, other than a gathering line, that transports gas from a gathering line or storage facility to a distribution center or storage facility; operates at a hoop stress of 20 percent or more of SMYS; or transports gas within a storage field.

These definitions have long been unsatisfactory. As a result of this cross-referencing, the point where a gathering line ends and transmission or distribution begins is often subject to varying interpretation.

On September 25, 1991, we proposed a revised definition in a notice of proposed rulemaking (NPRM):

''Gathering line'' means, except as provided in paragraph (4), any pipeline or part of a connected series of pipelines used to transport gas from a well or the first production facility where gas is separated from produced hydrocarbons, whichever is farther downstream, to an applicable end point described in paragraphs (1), (2), or (3) below:

(1) The inlet of the first natural gas processing plant used to remove liquefied petroleum gases or other natural gas liquids.

(2) If there is no natural gas processing plant, the point where custody of the gas is transferred to others who transport it by pipeline to:

(i) A distribution center;

(ii) A gas storage facility; or

(iii) an industrial consumer.

(3) If there is no natural gas processing plant or point where custody of the gas is so transferred, the last point downstream where gas produced in the same production field or two adjacent production fields is commingled.

(4) A gathering line does not include any part of a pipeline that transports gas downstream—

(i) From the end points in (1), (2), or (3) in this Section;

(ii) From a production facility, if no end point exists; or

(iii) In any interstate transmission facility subject to the jurisdiction of the Federal Energy Regulatory Commission under the Natural Gas Act (15 U.S.C. 717 *et seq.*).

Legislative Changes

There has been a legislative change in underlying Federal pipeline safety laws since the NPRM was published on September 25, 1991. The Pipeline Safety Act of 1992 (Pub. L. 102–508) enacted on October 24, 1992, provided that, in defining ''gathering line'' we should

consider the functional and operational characteristics of the line. We are neither required to follow classifications established by FERC under the Natural Gas Act of 1938 nor prevented from using them if we choose. In addition, we are to prescribe standards defining the term ''regulated gathering line'' which may result in some regulation of rural gathering lines. In determining the specific physical characteristics which warrant regulation, we will consider factors which include location, length of line from the well site, operating pressure, throughput, and the composition of the transported gas.

Industry Recommendation

On September 28, 1998 we met with representatives of the Gas Processors Association (GPA) a trade organization representing much of the gas gathering industry. GPA suggested basing a definition of gathering on pipeline function. GPA suggested the following:

''Gathering line'' means any pipeline or part of a connected series of pipelines used to transport gas from a production source—gas wells; gas well separators; oil well separators; flow lines; and, dehydrators. The terminating end is either a single pipeline or a network of pipelines that collects gas from production facilities—and delivers the gas to facilities downstream from the end of the gathering line. The end of gathering shall be the most downstream location of the following:

(1) The inlet of a gas processing plant (notes: a gathering line could split and feed two separate gas plants (in-parallel) a gathering line would end at the first gas plant if the second plant is downstream of the first. (In-series))

(2) Excluding well head compressors (usually low horsepower) the outlet of the first compressor station located downstream of a production facility-or-the outlet of the first onshore compressor station downstream of an offshore gathering line.

(3) The outlet of the furthermost downstream: dehydration equipment; treating equipment; scrubber station; that makes the gas of suitable quality for residential consumption .

(4) The inlet to a storage facility; a FERC designated transmission line; or other line transporting gas of suitable quality for residential consumption.

If a gas plant exists, it is downstream of (2, 3, & 4). If (1, 2, 3) do not exist then the end of gathering is in effect a transmission line or a storage facility. If a gas plant exists, it is downstream of (2, 3, and 4). If (1, 2, 3) do not exist then the end of gathering is in effect a transmission line or a storage facility.

The GPA also suggested defining ''gathering return line''.

Gathering return line: means a line that returns treated gas to a production facility—or a field compressor—for: gas lift gas injection fuel for production equipment. Non-rural gathering return lines are not exempt from the requirements of 49 CFR 192. Rural gathering returns lines are exempt from the requirements of 49 CFR 192. These lines usually operate with maximum operating pressure less than 20% of the specified minimum yield strength do not service the general public.

The GPA proposed definition differs from the definition we presented in our 1991 NPRM in the focus on the function of the lines without reference to the custody or ownership of the product in the line.

Request for Participation

We are trying to change the fundamental relationship between the regulator and the operating companies in protecting the public and the environment. The purpose of this public discussion forum is to help create an environment in which the regulated industry, state agencies and other interested parties are encouraged to evaluate the issues and to find the best, safest, most cost effective solutions to any safety and environmental challenges raised by gas gathering.

Issued in Washington, D.C. on March 5, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety, Research and Special Programs Administration.

[FR Doc. 99–6012 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 64, No. 47

Thursday, March 11, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Restructuring of Enrolled Actuary Examinations

AGENCY: Joint Board for the Enrollment of Actuaries

ACTION: Notice.

SUMMARY: This notice describes the proposal by the Joint Board for the Enrollment of Actuaries (''Joint Board'') to restructure the examinations it offers to those individuals seeking the status of Enrolled Actuary (EA). It also provides notice of the Joint Board's proposal for awarding transition credits to those individuals who have completed, or will complete, part of the current enrollment examination program before the spring of 2001, when the Board expects to begin offering the new examinations. Finally, this notice provides interested parties with an opportunity to comment on the proposals.

DATES: Written comments on these proposed changes to the enrollment examinations or on the proposed transition credits are invited and must be received on or before April 26, 1999.

ADDRESSES: Written comments should be submitted with a signed original and three copies to the Office of the Director of Practice, Internal Revenue Service, at the following address: Mr. Patrick W. McDonough, Director of Practice, Internal Revenue Service, Office of Director of Practice C:AP:DOP, 1111 Constitution Avenue, NW, Washington, D.C. 20224.

All submissions will be open to public inspection and copying in room 1621, 1111 Constitution Avenue, NW, Washington, D.C. from 9 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Paulette Tino, Joint Board for the Enrollment of Actuaries, at (202) 622–7192, or Michael Roach, Joint Board for the Enrollment of Actuaries, at (202) 622–3415.

SUPPLEMENTARY INFORMATION:

Background

The Joint Board was established by the Secretary of the Treasury and by the Secretary of Labor under the authority of section 3041 of the Employee Retirement Income Security Act of 1974 (ERISA). The Joint Board is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. Consistent with that mandate, the Joint Board has promulgated regulations governing eligibility for enrollment. Those regulations are published at 20 CFR Part 901. An individual who wishes to be enrolled may satisfy the examination requirements for enrollment by passing the examinations offered by the Joint Board. At present the examinations leading to recognition as an Enrolled Actuary consist of two examinations, one of which is in two segments. The basic actuarial examination covers actuarial mathematics and consists of two segments, namely, actuarial mathematics (EA–1A) and pension actuarial mathematics (EA–1B). The pension law examination covers ERISA and other relevant statutes and their application to specific problems (EA–2). The last major revision of the format of the enrollment examinations was in 1984.

Since the last revision of the enrollment examinations, the law and regulations relating to pension plans have been amended many times. As a result, the current format of the enrollment examinations no longer provides the examiners with a sufficient opportunity to test the candidate's knowledge of the relevant pension law and of actuarial mathematics. The need to cover the types of actuarial problems arising under current pension laws and the need to conform the Joint Board's examination programs to recent developments in actuarial theory and practice have led the Joint Board to conclude that its current examination structure needs to be improved. The Board has determined that a restructuring of its examinations will improve its ability to determine whether those who seek enrollment have demonstrated competence in both the law and the actuarial theory which is relevant to the performance of pension actuarial services.

These matters were discussed by the Advisory Committee on Actuarial Examinations and the public at a meeting held for that purpose on June 30, 1998. Further consideration has been given to these issues by the Joint Board and by the co-sponsors of its examinations, the Society of Actuaries and the American Society of Pension Actuaries. As a result of these discussions, the Joint Board, the Society of Actuaries, and the American Society of Pension Actuaries have agreed that a restructuring of both the basic actuarial examination and the pension law examination is needed for adequate testing of candidates for enrollment.

Executive Order 12866

Executive Order 12866 requires agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Since no modification of any regulation is contemplated in this Notice, Executive Order 12866 does not affect this notice.

Regulatory Flexibility Act, Unfunded Mandates Reform Act of 1995, and Small Business Regulatory Enforcement Fairness Act of 1996

Because the changes to the examination program of the Joint Board contemplated in this Notice do not require any change to existing regulations, the statutes cited in the caption of this section do not affect this Notice.

Drafting information. The principal author of this Notice is Ms. Paulette Tino, Chair, Joint Board for the Enrollment of Actuaries.

Proposed Modification

The Joint Board for the Enrollment of Actuaries has under consideration the restructuring of the examinations it offers under 20 CFR 901.13(d)(1). The need for restructuring is based on the expansion of the body of law affecting the private pension system and the corresponding increase in the complexity of the work for which enrolled actuaries are responsible. The syllabus of the current law examination, one of two examinations an individual must pass in order to meet the knowledge requirement for enrollment,

does not provide sufficient opportunity to test a candidate's knowledge of the relevant pension law. In addition, the pension mathematics segment of the basic actuarial examination does not cover sufficient material to test a candidate's ability to apply sound actuarial techniques to the increasingly complex regulatory environment in which defined benefit pension plans operate.

As a result of discussions held at a public meeting on June 30, 1998, and in other public forums, the Joint Board and the examination co-sponsors, the Society of Actuaries and the American Society of Pension Actuaries, propose to restructure the examination program.

The major topics for the restructured basic actuarial examination would be (1) compound interest, and (2) life contingencies. These topics are now covered in the first segment of the basic actuarial examination (EA–1A). The restructured examination covering these topics would be 2½ hours long, the same length as the current EA–1A examination.

The restructured pension law examination would be offered in two segments. The first would cover basic pension mathematics, including the law and regulations that relate to funding qualified defined benefit pension plans that are neither overfunded nor seriously underfunded. The second segment would cover the remaining relevant law and regulations. This would include treatment of overfunded plans, deficit reduction contributions, qualification standards, etc. A minimum standard of competence would be established for each segment. Each segment of the restructured pension law examination would be 4 hours long.

It is the Joint Board's intention to offer each examination once a year. The basic actuarial examination and the second segment of the pension law examination would be offered in the spring. The first segment of the pension law examination would be offered in the fall. It is anticipated that the restructured program will take effect in the spring of 2001 when the basic actuarial examination and the second segment of the pension law examination will be offered.

Appropriate transition credits would be accorded to persons who have successfully completed portions of the enrollment examination before 2001. The Joint Board is considering the following system of transition credits:

(1) A person who has successfully completed the first segment of the current basic actuarial examination before 2001 will receive credit for the restructured basic actuarial examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes *both* segments of the restructured pension law examination.

(2) A person who has successfully completed *both* segments of the current basic actuarial examination before 2001 will receive credit for the restructured basic actuarial examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes *both* segments of the restructured pension law examination.

(3) A person who has successfully completed the first segment of the current basic actuarial examination *and* the current pension law examination before 2001 will receive credit for the restructured basic actuarial examination *and* for the second segment of the restructured pension law examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the first segment of the restructured pension law examination.

(4) A person who has successfully completed the second segment of the current basic actuarial examination *and* the current pension law examination before 2001 will receive credit for *both* segments of the restructured pension law examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the restructured basic actuarial examination.

(5) A person who has successfully completed the current pension law examination before 2001 will receive credit for the second segment of the restructured pension law examination and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the restructured basic actuarial examination *and* the first segment of the restructured pension law examination.

(6) A person who does not meet the requirements of one of the preceding five paragraphs before 2001 will receive no credit for any examinations passed under the current examination program and will satisfy the examination requirement of the Joint Board's regulations only if he or she passes the restructured basic actuarial examination *and both* segments of the restructured pension law examination.

The above restructuring is subject to approval by the respective co-sponsors of the examination. This proposal is intended to reflect the views expressed at the public meetings held by the Joint Board and by the co-sponsoring organizations up to the present time. However, the Joint Board welcomes further public comments on the restructuring. Persons desiring to submit comments should submit them in writing on or before April 26, 1999, to the address given above.

Examination candidates will be furnished with more details on the restructuring after it has been approved.

Paulette Tino,

Chair, Joint Board for the Enrollment of Actuaries.

[FR Doc. 99–5868 Filed 3–10–99; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed West Fork Weiser Watershed Projects, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the proposed West Fork Weiser Watershed Projects, New Meadows Ranger District, Payette National Forest, Idaho. The proposed action would harvest timber, obliterate roads to reduce sediment, close other roads to reduce wildlife vulnerability, control noxious weeds, and construct a developed campground near Lost Valley Reservoir. A range of alternatives, including the no action alternative, will be developed as appropriate to address issues.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

DATE: Comments on the scope of the analysis must be received by April 10, 1999.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Chris Hescook, West Fork Weiser Watershed Projects Team Leader, New Meadows Ranger District, Payette National Forest, Drawer J, New Meadows, Idaho 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Chris Hescook, phone (208) 634–0608.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of the Payette National Forest, including timber. The environmental impact

statement for the Forest Plan (1988) analyzed a range of alternatives for management of the West Fork Weiser watershed. The Plan allocated this area to general forest, including timber management, and assigned it to Management Area #4. The area has had previous entries for timber harvest.

As well as Forest-wide direction, the plan gives specific direction for this management area. It requires integrated protection of multiple resources including fish, wildlife, range, soil and water, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS. The first opportunity in the process is scoping, which includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

The Forest Service will consult with the National Marine Fisheries Service, Department of Commerce, and the U.S. Fish and Wildlife Service, Department of Interior, or potential impacts to threatened and endangered species.

Preliminary issues include effects on fisheries, wildlife, recreation, water quality, and economics.

The second major opportunity for public input is with the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in September, 1999. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. Public comments are invited at that time.

The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making the final decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

David F. Alexander, Forest Supervisor of the Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: March 5, 1999.

David F. Alexander,

Forest Supervisor.

[FR Doc. 99–6036 Filed 3–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Brown Creek Timber Sale, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for the proposed Brown Creek Timber Sale, New Meadows Ranger District, Payette National Forest, Idaho. The proposed action would harvest timber, obliterate roads to reduce sediment, and close other roads to reduce wildlife vulnerability. The Forest prepared an environmental assessment (EA) for this project and issued a decision notice in September 1998. The Forest withdrew the decision in December 1998 so that an updated analysis of roadless and old growth could be made and will prepare an EIS. The EA analyzed three alternatives, including a no action alternative. The proposed action would harvest within the Patrick Butte Roadless Area; however, no new roads would be constructed. All actions will follow the Chief's interim rule on road building. The alternatives considered in the EA, which would be analyzed in the draft EIS (DEIS), would harvest up to 4.3 million board feet of timber. Other alternatives will be developed depending on new issues raised.

The agency gives notice of the full environmental analysis and decision making process that is continuing on the proposal so that interested and affected people know how they may participate and contribute to the final decision. The Forest conducted public scoping and addressed subsequent issues in the EA. The Forest now invites comments on the scope of the analysis and the issues to be addressed.

DATES: Comments on the scope of the analysis must be received by April 10, 1999.

ADDRESSES: Submit written comments and suggestions to Jack Irish, Brown Creek Team Leader, New Meadows Ranger District, Payette National Forest, PO Box J, New Meadows, Idaho 83654.

FOR FURTHER INFORMATION CONTACT: Questions about the project should be directed to Jack Irish, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of the Payette National Forest, including timber. The environmental impact statement for the Forest Plan (1988) analyzed a range of alternatives for management of the Brown Creek watershed. The Plan allocated this area to general forest, including timber management, and assigned it to Management Area #11. The area has had previous entries for timber harvest.

As well as Forest-wide direction, the plan gives specific direction for this management area. It requires integrated protection of multiple resources

including fish, wildlife, range, soil and water, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and during review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

Issues that were considered and analyzed in the EA were water quality and soils, wildlife habitat, vegetation, fire and fuels, roadless character and wilderness potential, air quality, biodiversity, economics and socio-economics, fish habitat, heritage resources, noxious weeds, range, recreation and visual quality, roads and access, threatened, endangered and sensitive plant species, and wetlands and floodplains. It is important to bring any new issues to the attention of the Forest now so that they may be considered in the EIS.

The National Marine Fisheries Service, Department of Commerce, and the U.S. Fish and Wildlife Service, Department of Interior, have been consulted on potential impacts to threatened and endangered species.

The second major opportunity for public input is with the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in May, 1999. EPA will then publish a notice of availability of the DEIS in the **Federal Register.** Public comments are invited.

The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In the FEIS the Forest Service is required to respond to comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, which is expected to be completed in August, 1999, and applicable laws, regulations, and policies in making the final decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

David F. Alexander, Forest Supervisor of the Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Dated: March 4, 1999.

David F. Alexander,

Forest Supervisor.

[FR Doc. 99–6037 Filed 3–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Risk Management Agency

Risk Management Advisory Committee

AGENCY: Office of the Secretary, Risk Management Agency, USDA.

ACTION: Notice of intent to establish; request for nominations and comments.

SUMMARY: The U.S. Department of Agriculture (USDA) proposes to establish the Risk Management Advisory Committee. The purpose of the Committee is to provide the Secretary of Agriculture with advice concerning risk management issues and policies relating to agriculture (e.g., federal crop insurance and other risk management tools). This document seeks nominations of individuals to be considered for selection as Committee members. Comments are requested on categories of membership and duties of the Committee.

DATES: Written nominations must be received on or before April 12, 1999.

ADDRESSES: Nominations should be sent to Ms. Diana Moslak, Risk Management Agency, USDA, 1400 Independence Ave., SW, Room 3053–S, Ag. Box 0801, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Diana Moslak, (202) 720–2832.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (FACA) (5 U.S.C. App.), notice is hereby given that the Secretary of Agriculture intends to establish the Risk Management Advisory Committee, hereafter referred to as Committee. The purpose of the Committee is to provide the Secretary of Agriculture with advice concerning risk management issues and policies relating to agriculture (e.g., federal crop insurance and other risk management tools). The Committee shall develop recommendations for consideration by the Secretary of Agriculture with regard to strengthening the agricultural safety net for producers.

The Secretary of Agriculture has determined that the work of the Committee is in the public interest in view of the recognized need to strengthen the agricultural safety net.

The Secretary of Agriculture or a person designated by the Secretary of Agriculture shall serve as the Chairperson of the Committee. A senior official of the Risk Management Agency, shall be designated to serve as the Committee's Executive Secretary. Staff support essential to the execution of the Committee's responsibilities will be provided by the Risk Management Agency.

Committee members will be appointed by the Secretary of Agriculture to serve 2 years. The Committee will be comprised of twenty (20) members representing the balanced interests of the agricultural community, including but not limited to agricultural producers; the crop insurance industry; grower groups; commodity groups; associations affiliated with or comprised of users of, the agricultural safety net; Federal, state, and tribal officials; and other interested parties.

The Secretary of Agriculture invites those individuals, organizations, and groups affiliated with or users of the agricultural safety net, to nominate individuals for membership on the Committee. Nominations should describe and document the proposed member's qualifications for membership to the Committee. The Secretary of Agriculture seeks a diverse group of members representing a broad spectrum of persons interested in the strengthening of the agricultural safety net.

Individuals receiving nominations will be contacted and biographical information must be completed and returned to the USDA within 10 working days of its receipt, to expedite the clearance process that is required before selection by the Secretary of Agriculture.

Equal opportunity practices will be followed in all appointments to the Committee in accordance with USDA policies. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by USDA, membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, persons with disabilities, and limited resource agricultural producers.

Dated: February 19, 1999.

Deborah Matz,

Deputy Assistant Secretary for Administration.

[FR Doc. 99–6030 Filed 3–8–99; 12:43 pm]

BILLING CODE 3410–08–M

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection of Information; Mouthing Behavior Study; Comment Request

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires, the U.S. Consumer Product Safety Commission (''CPSC'' or ''Commission'') is announcing an opportunity for public comment on a proposed study to determine the frequency and duration of children's mouthing behaviors. The study will observe 200 children ages 3 months through 36 months to record what items they put in their mouth and for how long. The study also includes a telephone survey of the parents of about 400 children between 37 and 72 months old to estimate the mouthing behavior of these children. The information will help the Commission assess the risks associated with children mouthing products containing potentially harmful substances. The Commission will consider all comments received in response to this notice before requesting approval of this observational study from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary on or before June 9, 1999.

ADDRESSES: Written comments should be captioned ''Mouthing Behavior Study'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207 or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Comments also may be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, call or write Celestine T. Kiss, Engineering Psychologist, Consumer Product Safety Commission, Washington, D.C. 20207; 301–504–0468 ext. 1284 or by email to ckiss@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The U.S. Consumer Product Safety Commission staff is investigating the potential exposure and health risks to children from teethers, rattles, and toys that may be made from polyvinyl chloride (PVC) that contains various dialkyl phthalate (DAP) plasticizers, especially diisononyl phthalate (DINP). Manufacturers use plasticizers to soften the PVC.

The CPSC staff recently released a report, The Risk of Chronic Toxicity Associated with Exposure to Diisononyl Phthalate (DINP) in Children's Products (Dec. 1998), which concluded that based on the best available information, few, if any, children are at risk of liver or other organ toxicity from PVC toys that contain DINP. This was based on estimates of the amount of DINP ingested, which indicated that DINP exposure did not reach a potentially harmful level. However, the staff believes that there are a number of uncertainties in this assessment, particularly regarding the types of toys that children are mouthing and how long they typically mouth these toys. Staff will undertake additional work to gather better data on which to base the health risk assessment.

Whether DINP would cause toxic effects in humans depends on the amount of DINP that is ingested. Thus, determining the amount of time children have DINP-containing products in their mouths is one important component of the risk assessment. The Commission also can use information from this study to assess potential hazards associated with other children's products, such as exposure to lead.

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval.

B. Description of the Collection of Information

This additional work will include an extensive exposure study to obtain a better estimate of the amount of time children mouth products that could contain phthalates. The CPSC is also interested in how mouthing time varies with age, gender, and socioeconomic strata.

Subjects will be recruited by random digit dialing (RDD) in two large metropolitan areas that are each diverse from a socioeconomic viewpoint. RDD will be used to provide probability samples to ensure that the estimates are representative of the metropolitan areas where the study is conducted.

The observation portion of the study involves 200 children between 3 and 36 months old. The observations will be conducted over 2 days for 4 hours per day. The observer will keep a diary of the child's activities during the observations. Examples of activities will include eating, napping, or sleeping, play, and child-care. For 15 continuous minutes out of each hour, the child's mouthing activities will be recorded. This will include (1) the specific object being mouthed, (2) the length of the mouthing episode and (3) whether the object was placed to the lips, or put into the mouth. Mouthing is defined, for purposes of this study, as placing any item to the child's lips, tongue, and/or into the mouth.

In addition to the observations, a contractor will conduct a RDD telephone survey to determine mouthing behaviors of 400 children between 37 and 72 months old, as reported by the parent. This age group will not be observed.

The Commission will use all this information to estimate the frequency and duration of children's mouthing activities, by age. Interested persons may obtain a more detailed description of the intended study from the Commission's Office of the Secretary.

C. Burden on Respondents

The Commission's staff estimates that 200 subjects are required for the observation portion of the study. Each subject's total participation time will be approximately 13 hours. For most of this time, however, the child and the caregiver will be engaged in their regular activities. (Time spent in the normal course of a respondent's activities does not count as part of the burden of a collection of information. 5 CFR 1320.3(b)(2).)

The Commission's staff estimates that each child in the observation study, and the persons associated with each child (including parents and other caregivers), will spend an average total of about 3.5 hours among them in reacting specifically to the observer. This is calculated by estimating the time of interacting with one person for a 0.5 hour phone interview, two persons for 1 hour during the in-home interview/habituation period (2 hours total) and an average of 30 person-minutes of interaction relating to the study for each of the 2 observation sessions (1 hour total). Therefore, the total burden hours for these respondents will be about 700 hours (200×3.5 hours).

The staff estimates that the number of subjects required for the telephone survey portion of the study is 400. Each subject's total time will be approximately 15 minutes. Therefore, the total burden hours for the telephone survey will be about 100 hours.

Thus, the estimated one-time reporting burden for this collection is 800 hours.

C. Requests for Comments

The Commission solicits written comments from all interested persons about the proposed survey to determine children's mouthing behaviors. The Commission specifically solicits information about the hourly burden and about any monetary costs that may be imposed by this collection of information. As required by the PRA, the Commission also seeks information relevant to the following topics:

- Whether the collection of information is necessary for the proper performance of the Commission's functions;
- Whether the information will have practical utility for the Commission;
- Evaluate the accuracy of the agency's estimate of the burden on the proposed collection of information, including the validity of the methodology and assumptions used;
- Whether the quality, utility, and clarity of the information to be collected could be enhanced; and
- Whether the burden imposed by the collection of information on those who are to respond could be minimized, including by use of automated, electronic, mechanical or other technological collection techniques, or other forms of information technology.

Dated: March 5, 1999.

Sadye E. Dunn,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. 99–5980 Filed 3–10–99; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Rice University (hereafter Rice), a private university in Houston, Texas, an exclusive license in any right, title, and interest the Air Force has in United States Patent No. 5,760,941 issued June 2, 1998. The patent is filed in the name of Air Force employee Dr. Lim Nguyan and Rice employees Dr. James Young and Dr. Benhaam Aazhang for a ''System and Method for Performing Optical Code Division Multiple Access Communication Using Bipolar Codes.''

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Randy Heald, Patent Attorney, SAF/GCQ, 1740 Air Force Pentagon, Washington D.C. 20330–1740, Telephone No. (703) 588–5091.

Carolyn A. Lunsford,

Air Force Federal Register Liaison Officer.

[FR Doc. 99–5988 Filed 3–10–99; 8:45 am]

BILLING CODE 5001–05–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.330]

Office of Elementary and Secondary Education—Advanced Placement Incentive Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

SUMMARY: The Secretary invites applications for new awards for FY 1999 under the Advanced Placement Incentive Program and announces deadline dates for the transmittal of applications for funding under the program. This is a discretionary grant program.

Purpose of Program: The primary purpose of the Advanced Placement Incentive Program is to enable States to reimburse part or all of the cost of advanced placement test fees for low-income individuals who (1) are enrolled in an advanced placement class; and (2) plan to take an advanced placement test. In addition, a State educational agency (SEA) in a State in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use any grant funds, that remain after test fees have been paid on behalf of all eligible low-income individuals, for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas. This program is authorized under Title VIII, Part B, of the Higher Education Amendments of 1998 (1998 Amendments) (20 U.S.C. 1070a-11, note).

Who May Apply: SEAs in any State, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Deadline for Transmittal of Applications: April 26, 1999.

Deadline for Intergovernmental Review: May 26, 1999.

Applications Available: March 11, 1999.

Available Funds: $4,000,000.

Estimated Range of Awards: $2,000 to $400,000.

Estimated Average Size of Awards: $68,000.

Estimated Number of Awards: 59.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 15 months. States receiving grants under this program may use the funds to support allowable activities undertaken in State FY 1999, FY 2000, or both.

Requirements for Approval of Applications for Funds to Pay the Cost of Advanced Placement Test Fees Only

In order to receive funding under this program, an SEA must submit to the Department an application that contains the following:

(a) A description of the advanced placement test fees the State will pay on behalf of individual students, including the approximate number of students on whose behalf the State will pay the fees and the approximate date the State expects each student to take the advanced placement exam;

(b) A description of the method by which eligible low-income individuals will be identified, and the steps the State will take to ensure that any students receiving payments under this program are eligible for such payments;

(c) A description of the State's plan to disseminate information on the availability of test fee payments to eligible individuals through secondary school teachers and guidance counselors;

(d) The number of children in the State who were eligible to be counted under section 1124(c) of Title I, Part A of the Elementary and Secondary Education Act of 1965 (ESEA), as amended (20 U.S.C. 6333(c)), during the preceding State fiscal year;

(e) A description of the State's plan to evaluate the effectiveness of the program;

(f) An assurance that any funds received under this program will only be used to pay advanced placement test fees for eligible low-income individuals, except as provided in section 810(d)(1) of the 1998 Amendments;

(g) An assurance that the State will document the eligibility of each individual on whose behalf the State pays part or all of an advanced placement test fee in accordance with the terms of section 402A(e) of the Higher Education Act of 1965 (HEA), as amended; and

(h) An assurance that funds provided under this program will be used to supplement and not supplant other Federal, State, local, or private funds available to assist low-income individuals in paying for advanced placement testing.

Requirements for Approval of Applications That Contain Proposals to Use Grant Funds for Activities Authorized Under Section 810(d)(1)

SEAs that include in their applications proposals to use any grant funds, that remain after test fees have been paid on behalf of all eligible low-income individuals in the State, for activities authorized under section 810(d)(1) of the 1998 Amendments, must submit an application to the Department that contains (1) the information described above (Requirements for Approval of Applications for Funds to Pay the Cost of Advanced Placement Test Fees Only); and (2) the following:

(a) An assurance that no eligible low-income individual in the State will be required to pay more than a nominal fee to take advanced placement tests in core subjects; and

(b) A supplemental narrative that addresses the selection criteria described below.

Selection Criteria

The Secretary will use the following selection criteria to evaluate the section of the application that proposes to use any grant funds, that remain after advanced placement test fees have been paid on behalf of all low-income individuals in the State, to support activities authorized under section 810(d)(1) of the 1998 Amendments.

(**Note:** These selection criteria will *not* apply to the section of the application that proposes to use grant funds to pay advanced placement test fees).

These criteria are taken from the Education Department General Administrative Regulations, as codified at 34 CFR 75.210. The maximum total score for all of the selection criteria is 100 points. The maximum score for each criterion is as follows:

(a) Need for project—10 points.

(b) Significance—5 points.

(c) Quality of project design—25 points.

(d) Quality of project services—25 points.

(e) Quality of project personnel—10 points.

(f) *Adequacy of resources*—10 points.

(g) *Quality of the management plan*—10 points.

(h) *Quality of the project evaluation*—5 points.

Allowable Activities

States receiving grants under this program may use the grant funds to pay advanced placement test fees for eligible low-income individuals. In addition, States in which no eligible low-income individual is required to pay more than a nominal fee to take advanced placement tests in core subjects may use any grant funds, that remain after test fees have been paid on behalf of all eligible low-income individuals, for activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement tests; and (c) the availability of advanced placement courses in schools serving high-poverty areas.

Allocation of Funds

The Department intends to allocate approximately $2 million of the funds available under this program to States for the purpose of paying advanced placement test fees on behalf of eligible low-income individuals. The Department intends to fund—at some level—all applications (1) meeting the minimum requirements for approval of applications described in this notice; *and* (2) proposing to use grant funds for the purpose of paying test fees. In determining grant award amounts, the Department will consider the number of children in the State eligible to be counted under section 1124(c) of the ESEA, in relation to the number of such children in all States. The Department will also consider the State's description of the advanced placement test fees it intends to pay, and whether those fees are reasonable and allowable. The application package will provide each State with an estimate of the approximate amount of grant funds it can expect to receive for the purpose of paying test fees if all States participate in the program. In the event that all States do not participate in the program, the Department will reallocate the funds that would have been awarded to the non-participating States.

The Department intends to allocate approximately $2 million of the funds available under this program to States for the purpose of supporting activities directly related to increasing (a) the enrollment of low-income individuals in advanced placement courses; (b) the participation of low-income individuals in advanced placement courses; and (c) the availability of advanced placement courses in schools serving high-poverty areas. Proposals by SEAs to use grant funds for activities authorized under section 810(d)(1) of the program statute

will be evaluated based on the selection criteria described above. The Department will also consider the number of children in the State eligible to be counted under section 1124(c) of the ESEA, in relation to the number of such children in all States.

Waiver of Rulemaking

Because the Department intends to fund all applications meeting the minimum requirements for approval of applications described in this notice and proposing to use grant funds for the purpose of paying test fees, Department regulations governing the selection of new discretionary grant projects, codified at 34 CFR 75.200–75.222, will apply only to the section of the application that proposes to use grant funds for activities authorized under section 810(d)(1) of the 1998 Amendments. While it is generally the practice of the Secretary to offer interested parties the opportunity to comment on a regulation before it is implemented, section 437(d)(1) of the General Education Provisions Act exempts from formal rulemaking requirements regulations governing the first grant competition under a new or substantially revised program authority (20 U.S.C. 1232(d)(1)). In order to make awards on a timely basis, the Secretary has decided to publish this regulation in final under the authority of section 437(d).

APPLICABLE STATUTE AND REGULATIONS: Title VIII, Part B of the 1998 Amendments (20 U.S.C. 1070a–11, note). The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 75, 76, 77, 79, 80, 81, 82, 85, and 86.

The following definitions and other provisions are taken from the Advanced Placement Incentive Program statute, in Title VIII, Part B of the 1998 Amendments (20 U.S.C. 1070a-11, note). They are repeated in this application notice for the convenience of the applicant.

Definitions

As used in this section:

(a) The term ''advanced placement test'' includes only an advanced placement test approved by the Secretary of Education for the purposes of this program.

(b) The term ''low-income individual'' has the meaning given the term in section 402A(g)(2) of the [HEA].

Note: Under section 402A(g)(2) of the HEA, as amended, the term ''low-income individual'' means an individual from a family whose taxable income for the preceding year did not exceed 150 percent of an amount equal to the poverty level determined by using criteria of poverty established by the Bureau of the Census (20 U.S.C. 1070a–11(g)(2)).

Information Dissemination

The SEA shall disseminate information regarding the availability of test fee payments under this program to eligible individuals through secondary school teachers and guidance counselors.

Supplementation of Funding

Funds provided under this program must be used to supplement and not supplant other non-Federal funds that are available to assist low-income individuals in paying advanced placement test fees.

FOR APPLICATIONS OR INFORMATION CONTACT: Frank B. Robinson, U.S. Department of Education, School Improvement Programs, 400 Maryland Avenue, S.W., Room 3C153, Washington, D.C. 20202–6140. Telephone (202) 260–2669. Internet address: frank—robinson@ed.gov Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) upon request to the contact person listed in the preceding paragraph. Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to this Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the pdf, you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins, and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 1070a–11, note.

Dated: March 4, 1999.

Judith Johnson,

Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 99–6071 Filed 3–10–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Hearings

AGENCY: National Assessment Governing Board; Department of Education.

ACTION: Notice of Hearings.

SUMMARY: The National Assessment Governing Board is announcing four public hearings related to proposed voluntary national tests. The purpose of the hearings is to obtain public comment to inform the development, by the Governing Board, of a report required under the Omnibus Consolidated Appropriations Act for Fiscal Year 1999 (the Act). Section 305 (c)(1) of the Act states that ''The National Assessment Governing shall determine and clearly articulate in a report the purpose and intended use of any proposed federally sponsored national test. Such report shall also include:

(A) a definition of the term ''voluntary'' in regards to the administration of any national test; and

(B) a description of the achievement levels and reporting methods to be used in grading any national test.''

The Act states that the report is to be submitted to the White House and to the cognizant Senate and House authorizing and appropriations committees by September 30, 1999. However, the Governing Board intends to submit the report by June 30, 1999.

Interested individuals and organizations are invited to provide written and/or oral testimony to the Governing Board. In order to assist the public, the Governing Board has developed two possible scenarios related to the proposed voluntary national tests. These scenarios, explanatory information, and issues to consider are included in **ADDITIONAL INFORMATION**, below.

The Governing Board has contracted with the American Institutes for

Research to assist in the conduct and reporting of the public hearings.

Public Law 105–78 and the Act vest exclusive authority to develop the voluntary national tests in the Governing Board. Section 447 of the General Education Provisions Act prohibits the use of federal funds for pilot testing, field testing, implementation, administration, or distribution of voluntary national tests.

SCHEDULE OF DATES AND LOCATIONS: The schedules of dates and locations of the four public hearings have been set as follows:

Cities	Dates	Locations
Chicago, IL	March 29, 1999 Register by March 25, 1999	Chicago Marriott Downtown 540 North Michigan Avenue.
Atlanta, GA	March 30, 1999 Register by March 26, 1999	Westin Peachtree Plaza 210 Peachtree Street, N.W.
Washington, DC	April 7, 1999 Register by April 5, 1999	The Charles Sumner School, The Great Hall, 1201 17th Street NW.
San Francisco, CA	April 12, 1999 Register by April 8, 1999	The Argent Hotel 50 Third Street.

The hearing schedule for each site will be as follows: 10:00 am—12:00 noon and 1:00 pm—3:00 pm.

Indivduals wishing to present oral testimony should register in advance by the registration date indicated above in the schedule for the specific hearings. To register in advance, contact Ms. Molly Pescador at American Institutes for Research at 1–888–944–5001 extension 5313 from 8:30 a.m. to 4:30 p.m. Eastern Standard time. Requests to speak will be accommodated until all time slots are filled. Individuals who do not register in advance will be permitted to register and speak at the meeting in order of registration, if time permits. Each speaker is intended to have fifteen minutes; however, the actual time available will be determined in part by the volume of registered speakers. While it is anticipated that all persons who desire will have an opportunity to speak, time limits may not allow this to occur.

Written testimony is invited and welcomed. All testimony will become part of the public record and will be considered by the Governing Board in preparing the report to the White House and the Congress on the purpose, intended use, definition of ''voluntary,'' and reporting for the proposed voluntary national tests.

WRITTEN STATEMENTS: Written statements submitted for the public record should be postmarked by April 12, 1999 and mailed to the following address: Mark D. Musick, Chairman, (Attention: Ray Fields), National Assessment Governing Board, 800 North Capitol Street NW, Suite 825, Washington, DC 20002–4233.

Written statements also may be submitted electronically by sending electronic mail (e-mail) Ray__Fields@ED.GOV by April 12, 1999. Comments sent by e-mail must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Inclusion in the public record cannot be guaranteed for written statements, whether sent by mail or electronically, submitted after April 12, 1999.

One or more members of the Governing Board will preside at each hearing. The proceedings will be recorded for print transcription. The hearings also can be signed for the hearing-impaired, upon advance request.

ADDITIONAL INFORMATION:

Overview: Determining the Purpose, Intended Use, Definition of the Term Voluntary, and Reporting for the Proposed Voluntary National Test

Background

Following below are materials designed to prompt public discussion about the proposed voluntary national tests. The public discussion of these materials is intended to assist the National Assessment Governing Board complete an assignment it received in legislation passed by Congress, enacted in October 1998. The assignment Congress gave the Board is to determine the purpose and intended use of the proposed voluntary national test (VNT), defined the term voluntary, and described the means for reporting results. The Governing Board is required to report to Congress and the President by September 30, 1999. The Governing Board intends to submit its report by June 30, 1999.

The materials, described in more detail below, consist of the following:

- Two draft scenarios for the VNT.
- Appendix: Implementation and other issues related to the VNT.
- Related questions to help focus public comment.

Voluntary National Tests and the National Assessment of Educational Progress

In November 1997, as part of a compromise with the President, Congress passed legislation giving the Governing Board the task of developing the voluntary national tests that had been proposed by President Clinton and subsequently were being developed by the Department of Education. This included reviewing the test development contract awarded by the Department and revising it as the Board deemed appropriate. In assuming this task, the Governing Board stated publicly that it neither supported nor opposed the voluntary national test initiative, but would work diligently to develop good tests. The Board also would ensure that VNT development was effectively coordinated with policy developed for the National Assessment of Educational Progress (NAEP), developing NAEP policy being the board's primary mission. This coordination is important because Congress directed the Board to base the VNT on the content and the performance standards used for NAEP and to link the VNT to NAEP to the maximum extent possible.

Neutral Role

The Governing board is well aware of the fact that this current assignment to determine the purpose, intended use, definition of voluntary and reporting methods has the potential of being perceived by some as advocacy for the VNT initiative. The questions the Board was given, and is attempting to answer, are *IF* through the political process an agreement is reached to proceed with the voluntary national test initiative: What should be the purpose of the tests? What should be the intended uses? How should the VNT be reported? What should be the definition of the term ''voluntary'' in the context of the VNT?

Thus, underlying the Board's work in this regard is the assumption of agreement on the initiative. The Board understands that such an agreement does not exist and may not be reached. Written into law is a prohibition against pilot testing and filed testing the questions for the VNT that the Governing Board is developing. While not advocating for or against the initiative, the Board interprets the

congressional assignment to involve presenting the ''best case'' that can be made about the potential purpose and use of the voluntary national tests, if there is to be such a test.

The Draft Scenarios

Two Draft scenarios are presented below. They are intended to prompt discussion to assist in determining the purposes, intended use, definition of voluntary, and reporting approaches for the proposed voluntary national tests. The two scenarios were developed based on who makes the decision to volunteer to participate—either parents or school authorities. Other scenarios are possible and are expected to surface through public comment and Governing Board deliberation will be conducted between the March 4–6 and June 23, 1999 meetings of the Governing Board.

The scenarios are presented in table format with bulleted text for ease of presentation and comparison. Some elements or attributes in the table apply to both scenarios, some only to one, and are displayed accordingly.

Public Policy Model

One element in the draft scenarios needs explanation: what is referred to as the ''Public Policy Model.'' This model describes how decisions to participate would be made by public and private school authorities. It is hierarchical. For public schools, its first principle is to rely on state/local law and policy in determining the appropriate level for making the decision to participate in the VNT. Under this model, the decision passes from state, to district, to school. States decide first whether they will volunteer to participate. If they do, then state law and/or policy determines whether district participation is mandatory or discretionary.

If states do not volunteer, or volunteer but don't require district participation, then school districts decide whether to volunteer. If a school district volunteers, local policy determines whether school participation is mandatory or discretionary. If school participation is not mandatory, then each school determines whether it will volunteer. At each level, state/local law and policy will determine whether parents have the right to have their child ''opt out'' of testing.

For the non-public sector, appropriate private school authorities would decide whether to volunteer.

Statement of Purpose: Focus on 4th Grade Reading and 8th Grade Mathematics

In reviewing the test development contract for the voluntary national test, the Governing Board considered the subjects and grades to be covered. The legislation vesting the Board with responsibility for VNT test development does not specify or limit the subjects and grades to be tested. However, the accompanying conference report does direct that the VNT be based on NAEP content and NAEP performances standards and be linked to NAEP to the maximum extent possible. The Governing Board in August 1996 had adopted a policy on NAEP redesign. The redesign policy provides for testing at grades 4, 8, and 12 at the national level in 10 subjects and, based on the needs and interests expressed by states, at grades 4 and 8 at the state level in reading, writing, mathematics and science. Grades 4, 8, and 12 are transition points in American Schooling. Consistent with the NAEP redesign policy and the congressional directive to parallel NAEP. the Governing Board limited the test development contract to cover grade 4 reading and grade 8 mathematics. Proficiency in these subjects, by these grades, is considered to be fundamental to academic success.

Appendix: Implementation and Other Issues

In making its assignment, Congress did not ask the Governing Board to address implementation procedures for the VNT. Likewise, the assignment does not include defining the VNT by describing what it is *not* intended to do. However, the Governing Board believes that these matters inevitably will be raised throughout the deliberative process; that they afford a necessary context for discussing purpose, intended use, definition of voluntary, and reporting; and that it would be naive to ignore these matters. As a result, the draft scenarios are accompanied by an appendix that addresses delivery models, possible uses of the VNT by others, test administration considerations, and possible unintended consequences. This information is to serve as a backdrop for the discussion. The Board's primary goal remains: to prepare the required report to Congress and the President for submission by June 30.

Related Questions

The last part of these materials are questions and issues about the draft scenarios. They are intended to aid in discussion about the scenarios. They are organized according to the four required components of the report: purpose, intended use, definition of voluntary, and reporting. The questions will be a basis for organizing comments received from the public. However, the public is encouraged to address other issues as well, as they see fit.

DRAFT SCENARIOS FOR THE PROPOSED VOLUNTARY NATIONAL TEST

	Public policy model	Individual decision model
Purpose	To measure individual student achievement in 4th grade reading and 8th grade mathematics, based on the rigorous content and rigorous performance standards of the National Assessment of Educational Progress (NAEP), as set by the National Assessment Governing Board (NAGB).	
Voluntary (Federal Role)	The federal government shall not require participation by any state, district, public or private school, organization or individual in voluntary national tests or require participants to report voluntary national test results to the federal government.	
Voluntary (Who decides)	• Public and private school authorizes volunteer • State and/or local law and policy determines decision level (i.e., public policy model begins at the state level, then proceeds through district, and school—see Overview for description). • Parents ''opt out'' as determined by state/local law and policy.	• Parents decide whether student participates.
Inteded Use	To provide information to parents, students, and authorized educators about the achievement of the individual student in relation to rigorous content and rigorous performance standards based on NAEP, as set by NAGB.	To provide information to parents and students about the child's achievement in relation to rigorous content and rigorous performance standards based on NAEP, as set by NAGB.

DRAFT SCENARIOS FOR THE PROPOSED VOLUNTARY NATIONAL TEST—Continued

	Public policy model	Individual decision model
Reporting	• Results reported by NAEP performance standards (i.e., achievement levels—Basic, Proficient, Advanced) • Explanation of achievement levels in light of test questions taken by student • All test questions, student answers, and answer key returned in timely fashion • Easy to understand, readable	
	• Parents, students, and authorized educators received reports. • Some norm-referenced information (e.g., percent of students nationally at each achievement level, taken from the filed test results). • No aggregate data will be provided automatically (i.e., by class, school, district, and state), but individual data can be compiled by state/local participants, who will bear responsibility for suing resulting data in valid, appropriate ways. • Guidance provided on technical criteria for aggregate reporting if done by participants.	• Parents and students received reports. • Some norm-referenced information (e.g., percent of students nationally at each achievement level taken from the field test results), but no comparisons at class, schools, district, or state levels.

APPENDIX: IMPLEMENTATION AND OTHER ISSUES

	Public policy model	Individual decision model
Possible uses by others*	• General indicator of individual achievement against rigorous external standards established through a national consensus process.	
	• Parent/teacher follow up recommended but decided at state/district/school as appropriate. • Results can be compared to student performance on state and/or local tests as a basis for examining the content of state/local standards. • Local decision to use as one of several criteria about individual student; should be validated. • States may want to use as an external anchor to their state tests. • Since only one grade/two subjects, not much information for use as part of school accountability system; any such use should be validated.	Follow up with school/teacher is up to the parent.
The VNT is Not	• It is NOT tied to a preferred curriculum, teaching method or approach. • It is NOT intended for diagnosing specific learning problems or English language proficiency. • It is NOT intended as sole criterion in high stakes decision about individual student. • It is NOT intended for evaluating instructional practices, programs, or school effectiveness.	
Possible Test Delivery Models.	*Central Management and Oversight:* A federal agency takes the VNT as developed by the Governing Board; develops policies for quality control, security and reporting; contracts for printing, testing, scoring and reporting services; disseminates information about the test schedule; handles the ''sign-up'' of participants; monitors the testing; and ensures the quality control of results. *Free Market Model:* The VNT is developed by NAGB, licensed for marketing by commercial test publishers, and marketed like any commercial test for use by any appropriate public or private educational agency, testing center, or individual. Parents may ''opt out'' as determined by state law and policy and may ''opt in'' by purchasing private testing services if the test is not offered at their child's school. Quality control monitoring, rigor of test security, training of test administrators, content of reports, development of ''non-standard'' versions of tests, use of norms, etc., determined by costs and market.	
Administration	• Dissemination strategy to public and private education decision makers. • Testing in participating schools • Training of test administrators • Testing during specified date in March • Quality control monitoring of testing • Guidance to teachers on appropriate test preparation practices. • Reports sent to states, districts, schools, teachers and parents per state/local policy.	• Similar to SAT/ACT ''Self-select'' model. • Dissemination strategy to parents. • Parents sign-up at cooperating schools/test centers. • Testing at cooperating schools/test centers. • Testing during specified date in March. • Quality control monitoring of testing. • Reports sent to parents. • Q&A system available for parents.
Who Pays: Three Options	*Option 1:* Federal Gov't pays all costs: test development, testing, scoring & reporting. *Option 2:* Fed. Gov't pays for test development; volunteer (whether state district, school, or parent) pays for testing, scoring & reporting. *Option 3:* Fed. Gov't pays all costs initially; volunteer pays for all costs but development after year 1.	
Possible Consequences *Positive:*	• Parents become more involved with child's education. • Students study harder and learn more. • Teachers work more to emphasize important skills and knowledge in the subjects tested. • Parents, students, and teachers have a means for better communications about the child's achievement.	
Negative:	• VNT test-preparation ''industry'' for economically advantaged students. • Inappropriarte test preparation practices and over-emphasis on test-taking techniques. • Misuse of test results.	

APPENDIX: IMPLEMENTATION AND OTHER ISSUES—Continued

	Public policy model	Individual decision model
	• Cheating scandals; security breaches. • Litigation against NAGB.	

*This list is intended to be illustrative, not exhaustive, of uses that can be imagined that others may want to make of the VNT. Any use of the VNT beyond the intended use described in the draft scenarios should be validated for its applicability and appropriateness by the respective user.

The Draft VNT Scenarios: Questions and Issues

Purpose

1. What are the pros and cons of defining the purpose of the VNT as follows:

To measure individual student achievement in 4th grade and reading and 8th grade mathematics, based on the rigorous content and rigorous performance standards of the National Assessment of Educational Progress, as set by the National Assessment Governing Board.

2. What changes to this definition of purpose of the VNT follow from your analysis of the pros and cons?

Voluntary (federal role)

3. The draft scenarios state that the federal government will not require any individual or organization to participate in the VNT for any reason and will not require the reporting of VNT results to the federal government.

Please discuss the implications and pros and cons of this position.

Voluntary (who decides)

4. What are the pros and cons, and practical implications of the scenario in which parents make the decision about whether their children participate in the VNT (i.e., the Individual Decision Model)?

5. What are the pros, cons, and practical implications of placing the decision to participate in the VNT with public and private school authorities (i.e., the Public Policy Model)?

(The Public Policy Model is hierarchical. Its first principle is to rely on state/local law and policy in determining the appropriate level for making the decision to participate in the VNT. Under this model, the decision passes from state, to district, to school. States decide first whether they will volunteer to participate. If they do, then state law and/or policy determines whether district participation is mandatory or discretionary.

If states do no volunteer, or volunteer but don't require district participation, then school districts decide whether to volunteer. If a school district volunteers, local policy determines whether school participation is mandatory or discretionary. If school participation is not mandatory, then each school determines whether it will volunteer. At each level, state/local law and policy will determine whether parents have the right to have their child ''opt out'' of testing.

An analogous approach would apply to private schools.)

6. If, under the Public Policy Model, the state, district or school decides *not* to participate in the VNT, how important is it to provide parents an opportunity to decide whether their children will participate in the VNT?

Intended Use

7. What are the pros and cons of defining the only intended use of the VNT as follows:

To provide information to parents, students, and authorized educators about the achievement of the individual student in relation to rigorous content and rigorous performance standards based on the National Assessment of Educational Progress, as set by the National Assessment Governing Board.

8. What other uses of the VNT should be considered? By what criteria and evidence should they be approved? What authority should grant such approval?

9. What should be done

(a) to prevent inappropriate uses of the VNT?

(b) in response to inappropriate uses of the VNT?

Reporting

Under both the Public Policy Model and the Individual Decision Model scenarios, reports would be provided for individual students only. Results would be reported according to the performance standards used by the National Assessment of Educational Progress—Basic, Proficient, and Advanced. It may be possible to return the student's test booklet and answer sheet, along with an answer key, so that the recipients can see how the student performed on each test item.

No aggregate data would be provided automatically. There will be no national results collected or reported. State, district, school, or class level results would be possible to report under the Public Policy Model if states, districts, or schools elect to aggregate and analyze the data themselves. However, the validity and technical quality of the analyses would be the responsibility of the state, district, or school. The Governing Board would provide technical guidelines describing the criteria for such aggregation and analyses. Student results would not be aggregated under the Individual Decision Model.

10. What is the most meaningful way to report student results using performance standards?

11. What should be done about reporting results for students whose performance is below the Basic level?

12. What specific guidance should be given to states, districts, and schools on technical criteria for aggregating VNT data, for those that make the decision to do so?

13. No test is perfectly accurate. If students could be tested again on the same test, they may not get exactly the same score. How can this variability in test scores best be communicated to parents, students, and teachers?

Steps After Hearings: A transcript will be prepared for each hearing as well as a written summary of the testimony. After the four hearings have been completed, a report will be prepared synthesizing the testimony presented at all of the hearings. The Governing Board will consider this information in preparing the report required under the Act.

Public Record: A record of all Governing Board proceedings with respect to the public hearings will be available for inspection from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays, in Suite 825, 800 North Capitol Street, N.W., Washington, DC 20002.

Dated: March 8, 1999.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–6023 Filed 3–10–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Opportunity for Leadership Entity: Beijing Energy-Efficiency and Renewable Energy Demonstration Building

AGENCY: Office of Policy and International Affairs, Department of Energy.

ACTION: Identification of entity.

SUMMARY: The Department published a notice of opportunity on December 16, 1998 (63 FR 69267), to identify an entity to lead future activities for the Beijing Energy-Efficiency and Renewable Energy Demonstration Building, assuming the Department decides to proceed with this demonstration project. This notice announces the identification of that entity.

FOR FURTHER INFORMATION CONTACT: O. Cleveland Laird, Jr., Phone (202) 586–0979, FAX (202) 586–4447, E-mail: Cleveland.Laird@hq.doe.gov; or Mary Beth Zimmerman, Phone (202) 586–7249, FAX (202) 586–4447, E-mail: MaryBeth.Zimmerman@hq.doe.gov

SUPPLEMENTARY INFORMATION: The Department carefully reviewed all responses to the notice of opportunity and has identified the Natural Resources Defense Council (NRDC) as the entity to lead and make the necessary decisions for phases two and three of the China Energy Efficiency Demonstration Building Project, assuming the Department and China decide to proceed with this demonstration project.

The NRDC response accepts full responsibility for the project including all requirements for funding. The NRDC was found to have a sound approach, related capability and relevant experience. The Department and the NRDC have agreed to proceed with developing the formal agreement covering the responsibilities of both the Department and the NRDC under this project. This agreement will be consummated and signed as quickly as possible.

The NRDC has identified Mr. Robert Watson, Director, International Energy Project, as their project leader for this effort. Mr. Watson may be reached by telephone (212) 727–4489, by fax (212) 727–1773 or by e-mail: rwatson@nrdc.org. His mailing address is: Mr. Robert Watson, Director, International Energy Project, Natural Resources Defense Council, 40 West 20th Street, New York, NY 10011.

The Department thanks the other responders for their interest and hopes they will contact the NRDC regarding their potential contribution to this effort under the NRDC leadership, if they are interested. Further, the Department invites any organization having a continuing interest under this project to contact the NRDC to express such interest. The NRDC has assured the Department they welcome any such responses.

Issued in Washington, DC on March 4, 1999.

Abraham E. Haspel,

Deputy Assistant Secretary for Energy, Environmental and Economic Policy Analysis.

[FR Doc. 99–6063 Filed 3–10–99; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Notice of Availability; Draft DOE Manual Requirement on Use of Non-DOE Facilities for Low-Level Waste and Mixed Low-Level Waste Disposal

AGENCY: Department of Energy (DOE).

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) announces the availability of its draft requirement for the use of commercial facilities for treatment, storage, and disposal of radioactive waste. This draft requirement is consistent with the decision by DOE to continue its current policy of relying on DOE waste disposal facilities and of using commercial (non-DOE) facilities by exemption when DOE disposal is not practical. This decision is based on the results of DOE's policy analysis on the use of commercial facilities for Low-Level Waste (LLW) and Mixed Low-Level Waste (MLLW) disposal.

FOR FURTHER INFORMATION CONTACT: Martin Letourneau, U.S. Department of Energy, EM–35, 19901 Germantown Road, Germantown, Maryland 20874, by telephone at 301–903–7656, or by e-mail at: martin.letourneau@em.doe.gov. For additional information on the policy analysis, please contact: Jay Rhoderick, at the above address, or by telephone at 301–903–7174. Electronic copies of the draft Order and Manual are available on the Internet at: http://www.explorer.doe.gov:1776/htmls/draft.html> under the title ''Series 400 Work Process.'' Copies of the policy analysis are available through the Center for Environmental Management Information at 1–800–736–3282.

SUPPLEMENTARY INFORMATION: DOE announced in its March 19, 1998, Notice of Intent (63 FR 13396) that it would conduct an analysis of its use of commercial disposal facilities for LLW and MLLW and solicited comments from the public and interested organizations. DOE's current policy is to rely on its own facilities for the disposal of its wastes, and by exemption where necessary, make limited use of commercial facilities that have licenses from either the Nuclear Regulatory Commission or an Agreement State.

The policy analysis concluded that DOE should continue its preference for use of DOE disposal facilities for DOE wastes and to use commercial facilities under an exemption process when DOE disposal is not practical. Where on-site DOE disposal is not practical, use of both off-site DOE facilities and commercial facilities may be necessary, and this provides DOE with greater flexibility to ensure cost efficiency. DOE has delegated the exemption authority for determining when commercial facilities should be used to the DOE Field Office Managers to facilitate the exemption process when use of commercial facilities is necessary and in DOE's best interest. The DOE Field Office Managers are required to consult with the Office of the Assistant Secretary for Environment Safety and Health prior to granting the exemption.

Therefore, DOE will continue its policy of disposing its LLW and MLLW at the site at which it is generated, if practical, or if on-site disposal capability is not available, at another DOE disposal facility. DOE may approve exemptions from this policy. However, where an exemption is sought, the policy requires that the commercial disposal facility under consideration be in compliance with all applicable Federal, State, and local requirements, and that it have all of the necessary permits, licenses and approvals for disposal of the specific wastes involved.

The policy analysis was not completed on August 6, 1998, when DOE made available a revised draft of its Order and Manual on radioactive waste management (63 FR 42012). These draft documents set forth the requirements that DOE programs and contractors must follow in managing DOE radioactive waste to provide for radiological protection from DOE facilities, operations, and activities. The draft Order and Manual will replace the existing DOE Order on radioactive waste management, DOE 5820.2A.

The section of the draft Manual pertaining to the use of non-DOE facilities for treatment, storage, and disposal of radioactive waste was reserved pending the outcome of the policy analysis. The draft requirement is consistent with the results of the policy analysis and will be included in the section of the draft Manual that is reserved (DOE M 435.1, Chapter I, General Requirements and

Responsibilities, Section 2.E(4), Approval of Exemptions for Use of Non-DOE Facilities). The requirement would state:

DOE Field Element Managers are responsible for the Approval of Exemptions for Use of Non-DOE Facilities. DOE radioactive waste shall be treated, stored, and in the case of LLW, disposed of at the site where the waste is generated, if practical; or at another DOE facility. If DOE capabilities are not practical, exemptions may be approved to allow use of non-DOE facilities for the storage, treatment, and disposal of DOE radioactive waste based on the following minimum requirements:

(a) Such non-DOE facilities shall:

1. Comply with applicable Federal, state, and local requirements;

2. Have the necessary permit(s), license(s), and approval(s) for the specific waste(s); and

3. Be determined by the Field Element Manager to be acceptable based on a review conducted annually by DOE.

(b) Exemptions for the use of non-DOE facilities shall be documented to be cost effective and in the best interest of DOE, including consideration of alternatives for on-site disposal, an alternative DOE site, and available non-DOE facilities; consideration of life-cycle cost and potential liability; and be protective of public health and the environment.

(c) DOE waste shall be sufficiently characterized and certified to meet the facility's waste acceptance criteria.

(d) Appropriate National Environmental Policy Act (NEPA) review must be completed. For actions taken under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), it is DOE's policy to incorporate NEPA values into the CERCLA documentation (reference: Secretarial Policy Statement on NEPA, June 1994).

(e) Headquarters shall be notified of the exemption to use a non-DOE facility and the Office of the Assistant Secretary for Environment, Safety and Health (EH–1) shall be consulted prior to the exemption being executed.

(f) Host States and State Compacts where non-DOE facilities are located shall be consulted prior to approval of an exemption to use such facilities and notified prior to shipments being made.

Issued in Washington, DC March 4, 1999.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 99–6016 Filed 3–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–1–20–002]

Algonquin Gas Transmission Company; Notice of Compliance Filing

March 5, 1999.

Take notice that on March 3, 1999, Algonquin Gas Transmission Company (Algonquin) refiled its Annual FRQ filing to provide for an approximate $1.1 million refund to customers as required by the Commission in its Order on Compliance Filing issued on February 16, 1999 in Docket Nos. TM99–1–20–001 and TM99–1–20–000.

Algonquin states that the FRQ deferred balance for the period August 1, 1997 through July 31, 1998, results in an approximate $1.1 million net credit balance which includes carrying charges through November 30, 1998 that will be refunded to Algonquin's customers. Algonquin also states that pursuant to Section 32.5(c) of the General Terms and Conditions of its FERC Gas Tariff, Fourth Revised Volume No. 1, Algonquin will make the FRQ refund to the customers within 60 days of the acceptance of this filing by the Commission. Algonquin states that additional carrying charges will be reflected in the refund amount to include the period from November 30, 1998 through the payment date.

Algonquin states that copies of the filing were mailed to all affected customers of Algonquin and interested state commissions, as well as all parties in Docket No. TM99–1–20–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6001 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–229–000]

Florida Gas Transmission Company; Notice of Application for Abandonment

March 5, 1999.

Take notice that on February 26, 1999, Florida Gas Transmission Company (Florida Gas), P.O. Box 1188, Houston, Texas 77251–1188, filed an application pursuant to Section 7(b) of the Natural Gas Act and Part 157.18 of the Commission's Regulations requesting permission and approval to abandon pipeline facilities located in Dade County, Florida, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the Internet at http://www.ferc.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Florida Gas proposes to abandon 1.9 miles of 18-inch pipeline and approximately 327 feet of 2½-inch lateral connected to the Hialeah NW meter station located in Dade County, Florida. Florida Gas seeks this abandonment authority due to road construction in the immediate area by the Florida Department of Transportation. Florida Gas states that abandoning the facilities instead of relocating them will save approximately $2 to $3 million. Florida Gas also states that the abandonment of the 1.9 miles of 18-inch pipeline will not affect its ability to deliver firm volumes to its customers and will result in only a minimal reduction in its ability to deliver interruptible volumes. Further, Florida Gas states that abandonment of the 2½-inch lateral will not affect deliveries since Florida Gas can deliver all of the contractual volumes through an existing 6-inch lateral.

Any person desiring to be heard or to make any protest with reference to said application should on or before March 26, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211 and 385.214) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a motion to intervene

in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Florida Gas to appear or to be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5995 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–153–012]

Granite State Gas Transmission, Inc. Notice of Proposed Changes in Ferc Gas Tariff

March 5, 1999.

Take notice that on March 2, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the revised tariff sheets listed below for effectiveness on April 1, 1999:

Sixth Revised Sheet No. 215, and
Ninth Revised Sheet No. 289.

Granite State states that in Letter Orders issued June 1, 1998, July 25, 1998, and September 11, 1998, it was granted extensions to March 31, 1999, to add to its FERC Gas Tariff its compliance with certain Gas Industry Standard Board (GISB) requirements. According to Granite State, the extension related to GISB Standards for data elements, data sets, invoice details and EDM. Granite State further states that it has contracted with a Transportation Service Provider for the capability to comply with all GISB electronic communications-related standards and that the revised tariff sheets, above, incorporate into its tariff the GISB Standards for which it has previously been granted an extension.

Granite State states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6000 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–231–00]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

March 5, 1999.

Take notice that on March 1, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68103–0330, filed in Docket No. CP99–231–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon twenty-one small volume measuring stations located in Iowa and Minnesota. Northern makes such request under its blanket certificate issued in Docket No. CP82–401–00, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission. The filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern requests authority to abandon and remove twenty-one small volume measuring stations based on requests from twenty-one end-users, for the removal of the measuring stations from their property. It is stated that the facilities to be abandoned are jurisdictional facilities under the NGA and were constructed pursuant to superseded 2.55 regulations, budget, or blanket authority, depending on the year the facilities were originally placed in-service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5996 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2028–000]

PJM Interconnection, L.L.C.; Notice of Filing

March 5, 1999.

Take notice that on March 2, 1999, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to Attachment K-Appendix to the PJM Open Access Transmission Tariff (PJM Tariff) and Schedule 1, of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. (PJM Operating Agreement), establishing Fixed Transmission Rights (FTR) auction procedures.

PJM respectfully requests a waiver of the 60 day notice requirement in 19 CFR 35.3, and requests that the FTR auction provisions filed herein be effective as of April 13, 1999.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Any person desiring to be heard or to protest such filing should file a motion

to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (19 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 15, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6002 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2017]

Southern California Edison Company; Notice of Authorization for Continued Project Operation

March 5, 1999.

On February 26, 1997, Southern California Edison Company licensee for the Big Creek #4 Project No. 2017, filed an application for a new or subsequent license pursuant to the Federal Power Act (FPA) and the Commission's regulations thereunder. Project No. 2017 is located on the San Joaquin River in Fresno, Madera, and Tulare Counties, California.

The license for Project No. 2017 was issued for a period ending February 28, 1999. Section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1), requires the Commission, at the expiration of a license term, to issue from year to year an annual license to the then licensee under the terms and conditions of the prior license until a new license is issued, or the project is otherwise disposed of as provided in Section 15 or any other applicable section of the FPA. If the project's prior license waived the applicability of Section 15 of the FPA, then, based on Section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and as set forth at 18 CFR 16.21(a), if the licensee of such project has filed an application for a subsequent license, the licensee may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires, until the Commission acts on its application. If the licensee of such a project has not filed an application for a subsequent license, then it may be required, pursuant to 18 CFR 16.21(b), to continue project operations until the Commission issues someone else a license for the project or otherwise orders disposition of the project.

If the project is subject to Section 15 of the FPA, notice is hereby given that an annual license for Project No. 2017 is issued to Southern California Edison Company for a period effective March 1, 1999, through February 29, 2000, or until the issuance of a new license for the project or other disposition under the FPA, whichever comes first. If issuance of a new license (or other disposition) does not take place on or before, February 29, 2000, notice is hereby given that, pursuant to 18 CFR 16.18(c), an annual license under Section 15(a)(1) of the FPA is renewed automatically without further order or notice by the Commission, unless the Commission orders otherwise.

If the project is not subject to Section 15 of the FPA, notice is hereby given that Southern California Edison Company is authorized to continue operation of the Big Creek #4 Project No. 2017 until such time as the Commission acts on its application for subsequent license.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5998 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–138–000]

ANR Pipeline Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Austin Storage Field Project and Request for Comments on Environmental Issues

March 8, 1999.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of ANR Pipeline Company's (ANR) proposed Austin Storage Field Project. The project would involve the injection of approximately 2 billion cubic feet (Bcf) of nitrogen into the existing Austin Storage Field in Mecosta and Newaygo Counties, Michigan, to function as base gas.[1] The nitrogen injection would allow ANR to recover approximately 2 Bcf of the natural gas currently serving as base gas. ANR would install skid-mounted facilities to generate the nitrogen and then use compressor facilities for storage field injections.

This project would also involve a delineation of the Austin Storage Field boundary (including the fringe area protective acreage) which may have changed over past 57 years of operation. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law. A fact sheet addressing a number of typically asked questions, including the use of eminent domain, is attached to this notice as appendix 1.[2]

Summary of the Proposed Project

ANR proposes to inject approximately 2 Bcf of nitrogen into its existing Austin Storage Field in Mecosta and Newaygo Counties, Michigan, to function as base gas. This project would entail:

- The placement of a 500 horsepower (hp) natural gas fueled engine/compressor package approximately 750

[1] ANR's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, N.E., Washington, D.C. 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

feet east of ANR's Woolfolk Compressor Station for the withdrawal of the natural gas; and

• The clearing and regrading of a previously disturbed 200-foot-square area adjacent to gas well #124 in the Austin Storage Field for the placement of a nitrogen generator, three 700 hp air compressors, and a 500 hp compressor for nitrogen injection.

All equipment would be temporary (skid-mounted) and would be installed at an existing well location or along existing pipeline right-of-way. The location of the project facilities is shown in Appendix 2.

Land Requirements for Construction

The proposed activities would be performed within a 0.92 acre area of the existing right-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of the proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of activities associated with the proposed project under these general headings:

• Geology and Soils.
• Water Resources, Fisheries, and Wetlands.
• Vegetation and Wildlife.
• Endangered and Threatened Species.
• Public Safety.
• Land Use.
• Cultural Resources.
• Air Quality and Noise.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies; public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 4 of this notice.

Currently Identified Environmental Issues

We have already identified several issues that we think deserved attention based on a preliminary review of the proposed facilities and the environmental information provided by ANR. This preliminary list of issues may be changed based on your comments and our analysis.

• Air and noise impacts associated with the temporary use of air and gas compressors.
• Delineation of the storage field's existing boundary dimensions.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives tot he proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

• Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A Washington, DC 20426;
• Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.2;
• Reference Docket No. CP99–138–000; and
• Mail your comments so that they will be received in Washington, DC on or before April 7, 1999.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the ''RIMS'' link to information in this docket number. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222. Access to the texts of formal documents issued by the Commission with regard to this docket, such as orders and notices, is also available on the FERC website using the ''CIPS'' link. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–6024 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

March 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 1960–002.
c. *Date Filed:* February 19, 1999.
d. *Applicant:* Dairyland Power Cooperative—Wisconsin.
e. *Name of Project:* Flambeau Hydroelectric Station.
f. *Location:* On the Flambeau River in Rusk County, Wisconsin. The project does not utilize federal lands.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).
h. *Applicant Contact:* Mr. William L. Berg, Dairyland Power Cooperative, 3200 East Avenue South, La Cross, WI 54601, (608) 788–4000.
i. *FERC Contact:* Any questions on this notice should be addressed to Mark Pawlowski, E-mail address mark.pawlowski@ferc.fed.us, or telephone 202–219–2795.
j. *Deadline for filing additional study requests:* April 20, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The project consists of the following existing facilities: (1) a right earthen dam, 2,570 feet-long and a left earthen dam 2,130 feet-long, separated by a 138 foot-long gated spillway section with a crest elevation of 1157.0 feet NGVD; (2) a 1,900-acre reservoir with a normal water surface elevation of 1183.48 feet NGVD; (3) a powerhouse containing 3 vertical Kaplan turbines each connected to generator units for a total installed capacity of 15,000 kW; and (4) appurtenant facilities. The average annual energy generation is 60,727,590 kWh.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5997 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

March 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.
b. *Project No:* 7115–029.
c. *Date Filed:* February 8, 1999.
d. *Applicant:* Southeastern Hydro-Power, Inc. and Homestead Energy Resources, LLC.
e. *Name of Project:* George W. Andrews.
f. *Location:* At the Corps of Engineers George W. Andrews Lock and Dam on the Chattahoochee River in Houston County, Alabama and Early County, Georgia. The project occupies federal lands managed by the Corps of Engineers.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 8.
h. *Applicant Contact:* Mr. Charles B. Mierek, 5250 Clifton-Glendale Road, Spartanburg, SC 29307, (864) 579–4405.
i. *FERC Contact:* Any questions on this notice should be addressed to James Hunter, e-mail address: James.Hunter@ferc.fed.us, or telephone: (202) 219–2939.
j. *Deadline for filing comments and or motions:* April 14, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, Mail Code: DLC, HL–11.1, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (P–7115–029) on any comments or motions filed.

k. *Description of Transfer:* Southeastern Hydro-Power, Inc., a corporation, and Homestead Energy Resources, LLC, a limited liability company, have jointly requested transfer of the license for this project from Southeastern, the current licensee, to Homestead, the proposed transferee.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http://www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

B. Comments, Protests, or Motion to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date of the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTEST'', or ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–5999 Filed 3–10–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6239–1]

Ambient Air Monitoring Reference and Equivalent Methods: Designation of a New Reference Method

AGENCY: Environmental Protection Agency.

ACTION: Notice of designation.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, a new reference method for measuring concentrations of $PM_{2.5}$ in ambient air.

FOR FURTHER INFORMATION CONTACT: Frank F. McElroy, Human Exposure and Atmospheric Sciences Division (MD–46), National Exposure Research Laboratory, U.S. EPA, Research Triangle Park, North Carolina 27711; Phone: (919) 541–2622, email: mcelroy.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In accordance with regulations at 40 CFR part 53, the EPA examines various methods for monitoring the concentrations of certain pollutants in the ambient air. Methods that are determined to meet specific requirements for adequacy are designated as either reference or equivalent methods, thereby permitting their use under 40 CFR part 58 by States and other agencies in determining attainment of the National Ambient Air Quality Standards. EPA hereby announces the designation of a new reference method for measuring $PM_{2.5}$ in ambient air. This designation is made under the provisions of 40 CFR part 53, as amended on July 18, 1997 (62 FR 38764).

The new reference method for $PM_{2.5}$ is a manual monitoring method based on a particular commercially available $PM_{2.5}$ sampler. The newly designated method is identified as follows:

RFPS–0299–128, ''Andersen Instruments, Incorporated Model RAAS2.5–200 $PM_{2.5}$ Audit Sampler,'' configured as a $PM_{2.5}$ reference method and operated with software (firmware) version 4B, for 24-hour continuous sample periods at a flow rate of 16.67 liters/minute, in accordance with the Model RAAS2.5–200 Operator's Manual and with the requirements and sample collection filters specified in 40 CFR part 50, appendix L.

An application for a reference method determination for this method, based on the Andersen Instruments, Incorporated Model RAAS2.5–200 $PM_{2.5}$ Audit Sampler, was received by the EPA on July 6, 1998, and a notice of the receipt of this application was published in the **Federal Register** on October 29, 1998. The method is available commercially from the applicant, Andersen Instruments, Incorporated, 500 Technology Court, Smyrna, Georgia 30082.

Test samplers representative of this method have been tested by the applicant in accordance with the test procedures specified in 40 CFR part 53 (as amended on July 18, 1997). After reviewing the results of those tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as a reference method. The information submitted by the applicant will be kept on file at EPA's National Exposure Research Laboratory, Research Triangle Park, North Carolina 27711 and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

As a designated reference method, this method is acceptable for use by states and other air monitoring agencies under the requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes, the method must be used in strict accordance with the operation or instruction manual associated with the method, the specifications and limitations (*e.g.,* sample period or measurement range) specified in the applicable designation method description (see identification of the method above), and the specifications and requirements set forth in appendix L to 40 CFR part 50. Use of the method should also be in general accordance with the guidance and recommendations of applicable sections of the ''Quality Assurance Guidance Document 2.12.'' Vendor modifications of a designated reference or equivalent method used for purposes of part 58 are permitted only with prior approval of the EPA, as provided in part 53. Provisions concerning modification of such methods by users are specified under section 2.8 of appendix C to 40 CFR part 58 (Modifications of Methods by Users).

In general, a method designation applies to any sampler or analyzer which is identical to the sampler or analyzer described in the application for designation. In some cases, similar samplers or analyzers manufactured prior to the designation may be upgraded (*e.g.,* by minor modification or by substitution of a new operation or instruction manual) so as to be identical to the designated method and thus achieve designated status at a modest cost. The manufacturer should be consulted to determine the feasibility of such upgrading.

Part 53 requires that sellers of designated reference or equivalent method analyzers or samplers comply with certain conditions. These conditions are given in 40 CFR 53.9 and are summarized below:

(a) A copy of the approved operation or instruction manual must accompany the sampler or analyzer when it is delivered to the ultimate purchaser.

(b) The sampler or analyzer must not generate any unreasonable hazard to operators or to the environment.

(c) The sampler or analyzer must function within the limits of the applicable performance specifications given in parts 50 and 53 for at least one year after delivery when maintained and operated in accordance with the operation or instruction manual.

(d) Any sampler or analyzer offered for sale as part of a reference or equivalent method must bear a label or sticker indicating that it has been designated as part of a reference or equivalent method in accordance with part 53 and showing its designated method identification number.

(e) If such an analyzer has two or more selectable ranges, the label or sticker must be placed in close proximity to the range selector and indicate which range or ranges have been included in the reference or equivalent method designation.

(f) An applicant who offers samplers or analyzers for sale as part of a reference or equivalent method is required to maintain a list of ultimate purchasers of such samplers or analyzers and to notify them within 30 days if a reference or equivalent method designation applicable to the method has been canceled or if adjustment of the sampler or analyzer is necessary under 40 CFR 53.11(b) to avoid a cancellation.

(g) An applicant who modifies a sampler or analyzer previously designated as part of a reference or equivalent method is not permitted to sell the sampler or analyzer (as modified) as part of a reference or equivalent method (although it may be sold without such representation), nor to attach a label or sticker to the sampler or analyzer (as modified) under the provisions described above, until the

applicant has received notice under 40 CFR 53.14(c) that the original designation or a new designation applies to the method as modified, or until the applicant has applied for and received notice under 40 CFR 53.8(b) of a new reference or equivalent method determination for the sampler or analyzer as modified.

(h) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to maintain the manufacturing facility in which the sampler is manufactured as an ISO 9001-certified facility.

(i) An applicant who offers $PM_{2.5}$ samplers for sale as part of a reference or equivalent method is required to submit annually a properly completed Product Manufacturing Checklist, as specified in part 53.

Aside from occasional breakdowns or malfunctions, consistent or repeated noncompliance with any of these conditions should be reported to: Director, Human Exposure and Atmospheric Sciences Division (MD–77), National Exposure Research Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

Designation of this reference method is intended to assist the States in establishing and operating their air quality surveillance systems under 40 CFR part 58. Questions concerning the commercial availability or technical aspects of this method should be directed to the applicant.

Norine E. Noonan,

Assistant Administrator, Office of Research and Development.

[FR Doc. 99–6033 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6308–1]

Prospective Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675, notice is hereby given that a prospective purchaser agreement (''Purchaser Agreement'') associated with the Deaconess Hospital Superfund Site (''Site''), in Wenatchee, Chelan County, Washington was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under section 107 of CERCLA, 42 U.S.C. 9607, against Willard Aldridge and Associates (''Aldridge''). The settlement would require Aldridge to, among other things, (1) pay to the Superfund $235,000, plus interest, over four years; and (2) perform specified general abatement projects at the Property, in accordance with the Scope of Work attached to the PPA, estimated to cost $250,000.

For thirty (3) days following the date of publication of this document, the Agency will receive written comments relating to the Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101.

DATES: Comments must be submitted on or before April 5, 1999.

AVAILABILITY: The Purchaser Agreement and additional background information relating to the Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101. A copy of the Purchaser Agreement may be obtained from Cara Steiner-Riley (ORC–158), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region X , 1200 Sixth Avenue, Seattle, Washington 98101.

Comments should reference the ''Deaconess Hospital Superfund Site, Prospective Purchaser Agreement'' and ''EPA Docket No. 10–04–0225–CERCLA'' and should be forwarded to Cara Steiner-Riley at the above address.

FOR FURTHER INFORMATION, CONTACT: Cara Steiner-Riley (ORC–158), Assistant Regional Counsel, U.S. Environmental Protection Agency, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, phone: (206) 553–1142.

Dated: February 24, 1999.

Chuck Findley,

Acting Regional Administrator, Region X.

[FR Doc. 99–5827 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6239–2]

Proposed Administrative Order on Consent; Reclaim Barrel Site, Salt Lake County, UT

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed section 107 settlement.

SUMMARY: In accordance with the requirements of section 107, of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA''), 42 U.S.C. 9607 *et seq.*, notice is hereby given of a proposed administrative settlement agreement under section 107, 42 U.S.C. 9607, concerning the Reclaim Barrel Site in Salt Lake County, Utah (the ''Site''). The proposed Administrative Order on Consent (''AOC'') requires the settling party, Bruce Jones, to pay a total of $1,000 to resolve his liability for response costs incurred and to be incurred by the United States Environmental Protection Agency (''EPA'') in connection with the remediation of the Reclaim Barrel Site.

DATES: Comments must be submitted to EPA on or before April 12, 1999.

ADDRESSES: Comments should be addressed to Matthew Cohn, (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, and should refer to: In the Matter of: Reclaim Barrel Site Administrative Settlement Agreement for Bruce Jones.

FOR FURTHER INFORMATION CONTACT: Matthew Cohn, (8ENF–L), Senior Enforcement Attorney, U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6853.

SUPPLEMENTARY INFORMATION: Notice of section 107, 42 U.S.C. 9607, Administrative Order on Consent Settlement: In accordance with section 107 of CERCLA, 42 U.S.C. 9607, notice is hereby given that the terms of an AOC for a cost recovery settlement have been agreed to by the settling party, Bruce Jones.

By the terms of the proposed AOC, Bruce Jones will pay $1,000 to the EPA Hazardous Substance Superfund. In exchange for payment, as provided for by CERCLA, the settling party will receive a covenant not to sue for liability under section 107(a) of CERCLA, 42 U.S.C. 9607(a), and contribution protection under section

107 CERCLA, 42 U.S.C. 9607. The amount that will be paid is based on an ability to pay analysis for the settling party.

U.S. EPA will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed administrative settlement agreement. A copy of the proposed AOC may be obtained in person or by mail from Sharon Abendschan, Enforcement Specialist (ENF–T), Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202–2466, (303) 312–6957.

Dated: March 2, 1999.

Carol Rushin,

Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice.

[FR Doc. 99–6032 Filed 3–10–99; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

March 9, 1999.

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: March 23, 1999 at 1:45 p.m.

PLACE: Conference Room on the Ninth Floor of the EEOC Office Building, 1801 ''L'' Street, N.W., Washington, D.C. 20507.

STATUS: The meeting will be open to the pubic.

MATTERS TO BE CONSIDERED;

1. Announcement of Notation Votes, and

2. Panel Presentations by Representatives of Older and Union Workers.

Note: Any matters not discussed or concluded may be carried over to a later meeting. (In addition to publishing notice on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission meetings.) Please telephone (202) 663–7100 (voice) and (202) 663–4074 (TDD) at any time for information on these meetings.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer, on (202) 663–4070.

Dated: March 9, 1999.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 99–6154 Filed 3–9–99; 3:15 pm]

BILLING CODE 6750–06–M

FEDERAL COMMUNICATIONS COMMISSION

[WT Docket No. 96–18; DA 98–2543]

Facilitate Future Development of Paging Systems

AGENCY: Federal Communications Commission.

ACTION: Notice; dismissal of applications.

SUMMARY: In this document, released on December 14, 1998, the Commercial Wireless Division, Wireless Telecommunications Bureau, under delegated authority, dismisses all pending mutually exclusive paging applications; all pending paging applications (other than applications for nationwide and shared channels) filed after July 31, 1996; and all pending paging applications that request spectrum that was previously assigned to another licensee on an exclusive basis.

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Grisel Martinez, Licensing and Technical Analysis Branch, Commercial Wireless Division, Wireless Telecommunications Bureau, at (202) 418–1385.

SUPPLEMENTARY INFORMATION: This Order in WT Docket No. 96–18, adopted and released on December 14, 1998, including the attachments containing the specific applications being dismissed, is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. The document is also available via the Internet at http://www.fcc.gov/Bureaus/Wireless/Orders/1998/da982543.txt.

Federal Communications Commission.

Steven E. Weingarten,

Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–6022 Filed 3–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register.**

Agreement No.: 202–010950–017.

Title: The Aruba, Bonaire Curacao Liner Association Agreement.

Parties: SeaFreight Line, Ltd., King Ocean Service, S.A., Crowley American Transport, Inc.

Synopsis: The proposed amendment would modify the Agreement's service contract and independent action provisions to conform with the Ocean Shipping Reform Act of 1999.

Dated: March 8, 1999.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 99–6072 Filed 3–10–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reasons why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Admiral Line, Inc., 10 E. Joseph Street, Moonachie, NJ 07074, Officers: Tunay Narli, President, Gamze Ayberk, Vice President

Samari Global Trade, Inc., 566 Seventh Avenue, Suite 604, New York, NY 10018, Officer: Sam Omari, President

SBS Worldwide (Chicago) Inc., d/b/a SBS Worldwide, 611 Eagle Drive, Bensenville, IL 60106, Officers: Steve Walker, CEO Nick Walker, President

G & A International Freight Forwarder, Inc., 7832 Collins Avenue, Suite 503, Miami Beach, FL 33141, Officer: Aurea M. Leal, President

Dated: March 5, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–6006 Filed 3–10–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 2, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Greater Community Bancorp, Totowa, New Jersey; to acquire 100 percent of the voting shares of Rock Community Bank, Glen Rock, New Jersey.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Capital City Bank Group, Inc., Tallahassee, Florida; to merge with Grady Holding Company, Cairo, Georgia, and thereby indirectly acquire First National Bank of Grady County, Cairo, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Barret Bancorp, Inc., Barretville, Tennessee; to acquire an additional 60.66 percent of the voting shares of Somerville Bank & Trust Company, Somerville, Tennessee.

D. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. First Security Corporation, Salt Lake City, Utah; to merge with XEON Financial Corporation, Stateline, Nevada, and thereby indirectly acquire Nevada Banking Company, Stateline, Nevada.

2. First Security Corporation, Salt Lake City, Utah; has applied to merge with Comstock Bancorp, Reno, Nevada, and thereby indirectly acquire Comstock Bank, Reno, Nevada.

Board of Governors of the Federal Reserve System, March 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5984 Filed 3–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than March 25, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Wells Fargo & Company, San Francisco, California; and Norwest Mortgage, Inc., Des Moines, Iowa; and Norwest Ventures, LLC, Des Moines, Iowa to engage, through a joint venture, in residential mortgage lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, March 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–5985 Filed 3–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Wednesday, March 17, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Future capital framework. (This item was originally announced for a closed meeting on March 15, 1999.)

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 9, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–6168 Filed 3–9–99; 3:18 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of

Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS) Subcommittee on Standards and Security Workgroup on Computer-based Patient Records.

Time and Date: 10:00 a.m. to 5:00 p.m., March 29, 1999—9:00 a.m. to 4:00 p.m., March 30, 1999.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Status: Open.

Purpose: The working group will hold hearings on standards for patient medical record information and their electronic transmission focusing on message standards, models for message standards, and the quality of the data found in patient medical record information.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, #602, Rockville, MD 20852, phone: 301–594–1483, x1052; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs,* where an agenda for the meeting will be posted when available.

Dated: March 5, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–5987 Filed 3–10–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Community/Tribal Subcommittee to the Board of Scientific Counselors, Agency for Toxic Substances and Disease Registry; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Agency for Toxic Substances and Disease Registry (ATSDR) announces the following subcommittee meeting.

Name: Community/Tribal Subcommittee (CTS).

Times and Dates: 12:30 a.m.–5 p.m., March 25, 1999. 8:30 a.m.–5 p.m., March 26, 1999.

Place: Westin Peachtree Plaza, 210 Peachtree Street, NW, Atlanta, GA 30303, telephone 404/659–1400.

Status: Open to the public, limited by the space available. The meeting room accommodates approximately 50 people.

Purpose: This subcommittee will bring to the Board of Scientific Counselors advice and citizen input, as well as recommendations on community and tribal programs, practices, and policies of the Agency. The subcommittee will report directly to the Board of Scientific Counselors.

Matters to be Discussed: Issues and concerns of the Community/Tribal Subcommittee relates to ATSDR's community and tribal programs. ATSDR will present issues and concerns on which it wishes community/tribal input. Policies and activities will be identified and recommendations for the Agency will be developed. The subcommittee will discuss CTS procedures; ways and means of outreaching to communities affected by hazardous substances in the environment; issues in the implementation of medical monitoring; possibilities for providing funding to communities to obtain their own health study expertise; the specific problems with Federal facilities and community access to health services. A report will be prepared and presented to the Board of Scientific Counselors.

Contact Person for More Information: Stephen Von Allmen, Principal ATSDR Contact, ATSDR, M/S E–28, 1600 Clifton Road, NE, Atlanta, GA 30333, telephone 404/639–0708.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 5, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–6017 Filed 3–10–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Family Preservation and Family Support (FP/FS) Services Implementation Study—State Level Data Collection

OMB No.: 0970–0137

Description: Participants in the implementation of the FP/FS Program will provide information necessary for reauthorization of Title IV–B, subpart 2 of the Social Security Act and provide feedback to ACF necessary to determine the need for future policy guidance and to refine the nature and scope of technical assistance.

Respondents: State, Local or Tribal Government and Not-for-Profit Institutions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
State Level Data Collection	150	1	0.849	127.40

Estimated Total Annual Burden Hours: 127.40

In Compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above.

Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and

Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 4, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–5986 Filed 3–10–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1068–N]

RIN 0938–AJ46

Medicare Program; Meetings of the Competitive Pricing Demonstration Area Advisory Committee, Kansas City Metropolitan Area

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces four meetings of the Area Advisory Committee for the Kansas City metropolitan area Competitive Pricing Demonstration.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in the designated areas to advise on the marketing and pricing of the plan and other factors. AAC meetings are open to the public.

DATES: The meetings are scheduled for March 26, 1999, from 9:45 a.m. until 5:30 p.m., c.s.t.; April 8, 1999, from 8:30 a.m. until 5:30 p.m., c.d.s.t.; April 22, 1999, from 8:30 a.m. until 5:30 p.m., c.d.s.t.; and May 12, 1999, from 8:30 a.m. until 5:30 p.m., c.d.s.t.

ADDRESSES: The March 26, April 8, and April 22, 1999, meetings will be held at the Crowne Plaza Kansas City, 4445 Main Street, Kansas City, MO 64111. The May 12, 1999, meeting will be held at the Hilton-Kansas City Airport, 8801 NW. 112th Street, Kansas City, MO 64153.

FOR FURTHER INFORMATION CONTACT: Richard P. Brummel, Deputy Regional Administrator, Health Care Financing Administration, Richard Bolling Federal Building, Room 235, 601 East 12th Street, Kansas City, MO 64106, (816) 426–5233.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee to make recommendations concerning the designation of areas for the project and appropriate research designs for implementation. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area along with other factors.

This notice announces four meetings of the Kansas City metropolitan area AAC. The meetings will be held on:

- March 26, 1999, from 9:45 a.m. until 5:30 p.m., c.s.t., at the Crowne Plaza Kansas City, 4445 Main Street, Kansas City, MO 64111.
- April 8, 1999, 8:30 a.m. until 5:30 p.m., c.d.s.t., at the Crowne Plaza Kansas City, 4445 Main Street, Kansas City, MO 64111.
- April 22, 1999, 8:30 a.m. until 5:30 p.m., c.d.s.t., at the Crowne Plaza Kansas City, 4445 Main Street, Kansas City, MO 64111.
- May 12, 1999, 8:30 a.m. until 5:30 p.m., c.d.s.t., at the Hilton-Kansas City Airport, 8801 NW. 112th Street, Kansas City, MO 64153.

The Kansas City metropolitan area AAC will meet four times for the purpose of advising the Secretary on how the project will be implemented. The AAC is currently being assembled and will be composed of representatives of health plans, providers, and Medicare beneficiaries in the area. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area, expected to be 5 years from the January 1, 2000, start date.

The Kansas City metropolitan area AAC will hold its first meeting on March 26, 1999. The agenda will include an introduction of the AAC members, a discussion of background materials related to the demonstration design, a presentation of the AAC mission, and a discussion of the process that will be utilized to provide advice on the implementation of the Medicare Competitive Pricing Demonstration.

The second meeting on April 8, 1999, will include a discussion and possible decisions on risk adjustment and the bidding process, various options on the government contribution or payment, the standard benefit package, and any other outstanding issues.

The third meeting on April 22, 1999, will continue discussion, and include possible decisions, on the government contribution or payment, the standard benefit package, and any other outstanding issues.

The fourth meeting on May 12, 1999, will summarize decisions made in earlier meetings and continue discussions and make final decisions on any outstanding issues from the previous meetings.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues listed above should contact the Kansas City Deputy Regional Administrator by 12 noon for each of the following days:

- March 18, 1999, for the first meeting.
- March 30, 1999, for the second meeting.
- April 14, 1999, for the third meeting.
- May 4, 1999, for the fourth meeting.

Anyone who is not scheduled to speak may submit written comments to the Kansas City Deputy Regional Administrator by 12 noon for each of the following days:

- March 19, 1999, for the first meeting.
- April 1, 1999, for the second meeting.
- April 16, 1999, for the third meeting.
- May 6, 1999, for the fourth meeting.

The meetings are open to the public, but attendance is limited to the space available.

(Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 8, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–6116 Filed 3–10–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1101–N]

Medicare Program; Meetings of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County, AZ

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces three meetings of the Area Advisory Committee for the Maricopa County Competitive Pricing Demonstration.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in the designated area to advise on the marketing and pricing of the plan and other factors. AAC meetings are open to the public.

DATES: The meetings are scheduled for March 31, 1999, from 9 a.m. until 5:30 p.m., m.s.t.; April 20, 1999, from 9 a.m. until 5:30 p.m., m.s.t.; and May 18, 1999, from 9 a.m. until 5:30 p.m., m.s.t.

ADDRESSES: The three meetings on March 31, 1999, April 20, 1999, and May 18, 1999, will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Abbott, Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

SUPPLEMENTARY INFORMATION:

Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee to make recommendations concerning the designation of areas for the project and appropriate research designs for implementation. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors.

This notice announces three meetings of the Maricopa County AAC. The meetings will be held on March 31, 1999, April 20, 1999, and May 18, 1999, from 9 a.m. to 5:30 p.m., m.s.t., at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021.

The Maricopa County AAC will meet three times for the purpose of advising the Secretary on how the project will be implemented. The AAC is currently being assembled and will be composed of representatives of health plans, providers, and Medicare beneficiaries in the area. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area, expected to be 5 years from the January 1, 2000, start date.

The Maricopa County AAC will hold its first meeting on March 31, 1999. The agenda will include an introduction of the AAC members, the presentation of the AAC mission, a discussion of background materials relating to the demonstration design, and a discussion of the process that will be utilized to provide advice on implementation of the Medicare Competitive Pricing Demonstration.

The second meeting on April 20, 1999, will include the discussion of and possible decisions on risk adjustment and the bidding process, the various options on the government contribution or payment, the standard benefit package, and any other outstanding issues.

The third meeting on May 18, 1999, will summarize the decisions made in earlier meetings and will continue the discussions and make final decisions on any outstanding issues from the previous meetings.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in the three preceding paragraphs should contact the San Francisco Regional Administrator by 12 noon for each of the following days:

March 19, 1999, for the first meeting.

April 9, 1999, for the second meeting.

May 7, 1999, for the third meeting.

Anyone who is not scheduled to speak may submit written comments to the San Francisco Regional Administrator by:

March 24, 1999, for the first meeting.

April 13, 1999, for the second meeting.

May 11, 1999, for the third meeting.

These meetings are open to the public, but attendance is limited to space available.

Authority: Section 4012 of the Balanced Budget Act of 1997, Public Law 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Public Law 92–463 (5 U.S.C. App.2, Section 10(a))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 8, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–6117 Filed 3–10–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Initial

Review Group, Medical Rehabilitation Research Subcommittee.

Date: March 9, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Marriott Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Anne Krey, Scientific Review Administrator, DIVISION OF SCIENTIFIC REVIEW, NATIONAL INSTITUTE OF CHILD HEALTH, AND HUMAN DEVELOPMENT, NATIONAL INSTITUTES OF HEALTH, 6100 EXECUTIVE BLVD., RM. 5E03, BETHESDA, MD 20892, 301–435–6908.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6067 Filed 3–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 9, 1999.

Time: 2:30 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6770.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 11, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9–101, 5600 Fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contact Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 15–16, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Phyllis D. Artis, Lead Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 16, 1999.

Time: 4:15 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: Parklawn Building—Room 9C–26, 5600 fishers Lane, Rockville, MD 20857, (Telephone Conference Call).

Contract Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 560 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental health Special Emphasis Panel.

Date: March 19, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Gerald E. Calderone, PHD, Scientific Review administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, Room 9C–18, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental health Special Emphasis Panel.

Date: March 22–23, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Embassy Square, 2000 N Street, NW, Washington, DC 20036.

Contract Person: Monica F. Woodfork, Grants Technical Assistant, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental health Special Emphasis Panel.

Date: April 6–7, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street NW, Washington, DC 20037.

Contract Person: Russell E. Martenson, PHD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6068 Filed 3–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and

the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee.

Date: April 13, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6069 Filed 3–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Depression, HPA Axis Activity, and Obstetrical Outcome.

Date: March 15, 1999.

Time: 10:00 AM to 11:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6100 Executive Blvd. 5th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Jon M. Ranhand, PhD, Scientist Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 435–6884.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 5, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–6070 Filed 3–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Exxon Valdez Oil Spill Trustee Council; Inviting Proposals

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Invitation for proposals.

SUMMARY: The Exxon Valdez Oil Spill Trustee Council is asking the public, private organizations, and government agencies to submit proposals for restoration of resources and services injured by the Exxon Valdez oil spill. The Invitation to Submit Restoration Proposals for Federal Fiscal Year 2000, a booklet explaining the process, is available from the Trustee Council office.

DATES: Proposals are due April 15, 1999, at 5:00 p.m.

ADDRESSES: Exxon Valdez Oil Spill Trustee Council, 645 ''G'' Street, Suite 401, Anchorage, Alaska 99501–3451.

FOR FURTHER INFORMATION CONTACT: The Restoration Office, (907) 278–8012 or toll free at (800) 478–7745 (in Alaska) or (800) 283–7745 (outside Alaska) or via e-mail at restoration@oilspill.state.ak.us.

SUPPLEMENTARY INFORMATION: Following the Exxon Valdez oil spill in March 1989, a Trustee Council of three state and three federal trustees, including the Secretary of the Interior, was formed. The Trustee Council prepared a restoration plan for the injured resources and services within the oil spill area. The restoration plan calls for annual work plans identifying projects to accomplish restoration. Each year proposals for restoration projects are solicited from a variety of organizations, including the public.

Willie R. Taylor,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 99–6011 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–RG–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by April 12, 1999.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: David Dell, Permit Biologist). Telephone: 404/679–7313; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: David Dell, Telephone: 404/679–7313; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION:

Applicant: Bernard R. Kuhajda, University of Alabama, Tuscaloosa, Alabama, TE008792–0

The applicant requests authorization to take (collect and sacrifice for genetic analysis) the endangered Cahaba shiner, *Notropis cahabae*, throughout the species range in Alabama for the purpose of enhancement of survival of the species.

Applicants: Clearwater Marine Aquarium, Miami Seaquarium, Sea World of Florida, Theater of the Sea, Inc., Mote Marine Lab, Marinelife Center of Juno Beach, Gulf World, Inc., and Hidden Harbor Turtle Hospital.

The Fish and Wildlife Service proposes to authorize selected veterinarians at the above-listed Florida

institutions to hold, treat, and euthanize when appropriate the endangered Atlantic ridley, *Lepidochelys kempii*, hawksbill, *Eretmochelys imbricata*, leatherback, *Dermochelys coriacea*, and green, *Chelonia mydas*, sea turtles; and the threatened loggerhead, *Caretta caretta*, and olive ridley, *Lepidochelys olivacea*, sea turtles.

Dated: March 4, 1999.

Judy L. Jones,

Acting Regional Director.

[FR Doc. 99–6018 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

National Satellite Land Remote Sensing Data Archive Advisory Committee; Committee Meeting

AGENCY: U.S. Geological Survey, DOI.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, the National Satellite Land Remote Sensing Data Archive (NSLRSDA) Advisory Committee will meet at the U.S. Geological Survey (USGS) Earth Resources Observation Systems (EROS) Data Center (EDC) near Sioux Falls, South Dakota. The Committee, comprised of 15 members from academia, industry, government, information science, natural science, social science, and policy/law, will provide the USGS, EDC management with advice and consultation on defining and accomplishing the NSLRSDA's archiving and access goals to carry out the requirements of the Land Remote Sensing Policy Act; on priorities of the NSLRSDA's tasks; and, on issues of archiving, data management, science, policy, and public-private partnerships.

Topics to be reviewed and discussed by the Committee include determining the content of an upgrading the basic data set as identified by the Congress; metadata content and accessibility; product characteristics, availability, and delivery; and, archiving, data access, and distribution policies.

DATES: April 21–23, 1999 commencing at 8:30 a.m. April 21 and adjourning at 12 noon on April 23.

CONTACT: Mr. Thomas M. Holm, Acting Chief, Data Services Branch, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota 57198, at (605) 594–6960, or email at *holm@edcmail.cr.usgs.gov*.

SUPPLEMENTARY INFORMATION:

Meetings of the National Satellite Land Remote Sensing Data Archive Advisory Committee are open to the public.

Dated: March 2, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–6040 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of amendment to Approved Tribal-State Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988, Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amendments to the Red Cliff Band of Lake Superior Chippewa Indians and the State of Wisconsin Gaming Compact of 1991, which was executed on January 15, 1999.

DATES: This action is effective March 11, 1999.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, D.C. 20240, (202) 219–4066.

Dated: March 4, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–6065 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–02–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–062–1430–01; UTU–54709]

Realty Action: Conveyance of Public Lands in Grand County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Conveyance of Public Lands in Grand County, Utah: UTU–54709.

SUMMARY: Notice is hereby given that, pursuant to the authority of Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (49 U.S.C. 2215), the County of Grand, Utah, has applied for conveyance of the surface estate on the following described public lands currently under Public Airport Lease UTU–54709:

Salt Lake Meridian, Utah

T. 24 S., R. 19 E. sec. 1, NE¼SE¼, SW¼SE¼, N½SE¼SE¼, N½S½SE¼SE¼.
T. 24 S., R. 20 E. sec. 6, lots 2, 4, 5, SW¼NE¼.
Totaling 262.19 acres.

The lands are currently being used for airport purposes. Grand County meets the requirements for conveyance under 43 CFR 2640.

The conveyance would be subject to valid existing rights of record including Rights-of-Way UTU–57097 for Grand County Road # 138, and UTU–67385 for a Western Gas Resources, Inc. buried gas pipeline gathering system that has not been constructed. The mineral estate would be reserved to the Federal government.

COMMENTS: For a period of 45 days from the date of publication of this notice in the **Federal Register** (April 26, 1999), interested parties may submit comments to the Assistant Field Office Manager, Division of Resources, Bureau of Land Management, 82 East Dogwood Avenue, Moab, Utah 84532. Objections will be reviewed by the Moab Field Office Manager who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

SUPPLEMENTARY INFORMATION: Additional information concerning this action may be obtained from Mary von Koch, Realty Specialist, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, (435) 259–2128.

Dated: March 2, 1999.

William Stringer,

Assistant Field Office Manager, Resources.

[FR Doc. 99–6035 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–010–1220–01]

Special Recreation Use Permit (SRUP) for Events Involving More Than Fifty Persons

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed supplementary rule.

SUMMARY: The Bureau of Land Management (BLM), Bakersfield (California) Field Office proposes a

supplementary rule requiring groups to obtain a Special Recreation Use Permit (SRUP) to conduct an event involving more than 50 persons. The purpose of this action is to protect natural and cultural resources; prevent wildfires, maintain public health, safety, and sanitation; and address occupancy and recreational use of BLM land managed by the Bakersfield Field Office .

DATES: Send your comments to reach BLM by April 15, 1999.

ADDRESSES: Mail or hand deliver comments to Bureau of Land Management, Bakersfield Office, 3801 Pegasus Drive, Bakersfield, CA 93308. You may send comments via e-mail to: mayers@ca.blm.gov.

FOR FURTHER INFORMATION CONTACT: Michael Ayers at the Bureau of Land Management, Bakersfield Office, 3801 Pegasus Drive, Bakersfield, CA 93308; telephone (805) 391–6120.

SUPPLEMENTARY INFORMATION: BLM's visitor services regulations allow it to establish supplementary rules for the protection of persons, property, and public lands and resources. See 43 CFR 8365.1–6. BLM must publish the rules in the **Federal Register** and in a newspaper of general circulation in the affected vicinity, or make them available to the public by other appropriate means. Once BLM adopts a supplementary rule, it will be available for inspection in the local office having jurisdiction over the lands, sites, or facilities affected. BLM will also post each supplementary rule near and/or within the lands, sites, or facilities affected.

The policy of the Department of the Interior is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, BLM invites interested persons to submit written comments, suggestions, or objections regarding the proposed rule to the location identified in the **ADDRESSES** section of this preamble. This supplementary rule will take effect after review of public comment.

BLM is proposing this supplementary rule to manage environmental and public health and safety issues associated with large groups wishing to conduct outdoor concerts or gatherings on BLM land. This supplementary rule would affect only public land under the management of the BLM, Bakersfield Field Office, Bakersfield, California, and is in conformation with the May 1997 Caliente Resource Management Plan.

Supplementary Rule

The following rule is in effect on land managed by the Bureau of Land Management, Bakersfield Office:

(a) Any organization, group, club, or formal or informal association of persons that proposes to conduct any event, rally, meeting, party, bazaar, flea market, swap meet, outdoor concert, festival, jamboree, encounter, or similar gathering of more than 50 persons in part or in full on land managed by the BLM Bakersfield Field Office must file an application for a Special Recreation Use Permit (SRUP) with the Bakersfield Field Office. The group must obtain a SRUP regardless of the commercial or financial status of the group involved or whether or not a profit is made or intended to be made from the event. At a minimum, all groups must provide for sanitation, security, insurance, and take appropriate measures to prevent violations of State and Federal laws related to the use, possession, distribution, or sale of Federally controlled substances. The group must apply for the SRUP as early as possible prior to the intended use, but no later than 120 days before the event, unless a shorter time is authorized by the Bakersfield Field Office Manager or his designated representative.

(b) This supplementary rule does not in any way restrict or prevent access to or use of private property within the designated area. Public officers or employees in the performance of their official duties are exempt from this supplementary rule. BLM will not use this supplementary rule to hinder or curtail any valid existing right, permit, or authorization.

(c) This supplementary rule does not replace or modify the requirements of BLM's Special Recreation Permits regulations at 43 CFR part 8372. BLM will not use this supplementary rule to discourage or restrict family gatherings for casual use recreation. BLM will not allow gatherings of adolescents without onsite adult supervision. The approval and subsequent issuance of a SRUP is discretionary with the Bakersfield Field Office Manager or his designated representative and may be replaced with a letter of authorization if BLM deems such action appropriate.

(d) If you knowingly and willfully violate this supplementary rule, you may be subject to arrest and a fine of not more than $1,000 or imprisonment of not more than 12 months as provided by 43 CFR 8360.0–7.

Dated: March 3, 1999.

Ron Fellows,

Bakersfield Field Office Manager.

[FR Doc. 99–6034 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Notice of Meeting Cancellation

Notice is hereby given in accordance with the Federal Advisory Committee Act that the meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission previously scheduled for Tuesday, March 16, 1999 in San Francisco will be canceled.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Naomi T. Gray
Mr. Michael Alexander
Ms. Lennie Roberts
Ms. Carlota del Portillo
Mr. Redmond Kernan
Mr. Merritt Robinson
Mr. John J. Spring
Ms. Amy Meyer, Vice Chair
Dr. Howard Cogswell
Mr. Jerry Friedman
Ms. Yvonne Lee
Mr. Trent Orr
Ms. Jacqueline Young
Mr. R. H. Sciaroni
Dr. Edgar Wayburn
Mr. Mel Lane

Dated: March 2, 1999.

Brian O'Neill,

General Superintendent Golden Gate National Recreation Area.

[FR Doc. 99–6029 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Yakima River Basin Water Enhancement Project (YRBWEP), Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of record of decision.

SUMMARY: This notice is issued under authority of the National Environmental Policy Act of 1969. The Record of Decision (ROD), signed on March 5, 1999, contains the decision of the Department of the Interior, Bureau of Reclamation (Reclamation) Pacific Northwest Region, to select and implement the Preferred Alternative (Alternative 2A), as described in the Final Programmatic Environmental Impact Statement (FPEIS). Alternative 2A was identified as the most efficient and environmentally sound alternative for achieving the purposes of Title XII of Public Law 104–434.

ADDRESSES: Copies of the ROD may be requested from the following locations:

- Bureau of Reclamation, Pacific Northwest Region, 1150 North Curtis Road, Boise, Idaho 83706–1234.
- Bureau of Reclamation, Upper Columbia Area Office, 1917 Marsh Road, Yakima, Washington, 98907–1794.

FOR FURTHER INFORMATION CONTACT: John Tiedeman, Environmental Specialist, (509) 575–5848 extension 238.

SUPPLEMENTARY INFORMATION: Title XII authorized Phase 2 of the YRBWEP to protect, mitigate, and enhance fish and wildlife and to improve the reliability of the water supply for irrigation through improved water conservation and management, and other appropriate means.

Evaluation of alternative methods of accomplishing Title XII objectives is the subject of the FPEIS, filed with the Environmental Protection Agency (FES–99–3) on January 20, 1999.

Dated: March 5, 1999.

Kenneth R. Pedde,

Acting Regional Director.

[FR Doc. 99–6019 Filed 3–10–99; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 104–TAA–7 (Review); AA1921–198–200 (Review); 731–TA–3 (Review)]

Sugar From the European Union; Sugar From Belgium, France and Germany; and Sugar and Syrups From Canada

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the countervailing duty order on sugar from the European Union and concerning the antidumping duty orders on sugar from Belgium, France and Germany; and sugar and syrups from Canada.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the countervailing duty order on sugar from the European Union, and the antidumping duty orders on sugar from Belgium, France and Germany, and sugar and syrups from Canada would be likely to lead to continuation or recurrence of material injury. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: March 4, 1999.

FOR FURTHER INFORMATION CONTACT: John T. Fry (202–708–4157), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On January 7, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 4901, February 1, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on June 28, 1999, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on July 15, 1999, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 8, 1999. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference

to be held at 9:30 a.m. on July 12, 1999, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is July 6, 1999. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is July 26, 1999; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before July 26, 1999. On August 31, 1999, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 7, 1999, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16 and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–6062 Filed 3–10–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: March 26, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.

2. Minutes.

3. Ratification List.

4. Inv. No. TA–201–68 (Lamb Meat) (Remedy)—briefing and vote.

5. Inv. No. 731–TA–814 (Preliminary) (Creatine Monohydrate from China)—briefing and vote.

6. Outstanding action jackets:

(1) Document No. GC–99–017: Approval of petition for an advisory opinion in Inv. No. 337–TA–334 (Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles).

(2) Document No. GC–99–019: Approval of whether to review an initial determination granting summary determination on the economic prong of the domestic industry requirement in Inv. No. 337–TA–416 (Certain Compact Multipurpose Tools).

(3) Document No. ID–99–004: Approval of tentative list of questionnaire recipients, **Federal Register** notice of OMB clearance of information collection, and draft questionnaires in Inv. No. 332–404 (Methyl Tertiary Butyl Ether (MTBE): Conditions Affecting the Domestic Industry).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda to the following meeting.

Issued: March 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–6155 Filed 3–9–99; 3:16 pm]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

TIME AND DATE: March 24, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–130 (Review) (Chloropicrin from China)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 1, 1999).
5. Outstanding action jackets:

(1) Document No. GC–99–017: Approval of petition for an advisory opinion in Inv. No. 337–TA–334 (Certain Condensers, Parts Thereof and Products Containing Same, Including Air Conditioners for Automobiles).

(2) Document No. GC–99–019: Approval of whether to review an initial determination granting summary determination on the economic prong of the domestic industry requirement in Inv. No. 337–TA–416 (Certain Compact Multipurpose Tools).

(3) Document No. ID–99–004: Approval of tentative list of questionnaire recipients, **Federal Register** notice of OMB clearance of information collection, and draft questionnaires in Inv. No. 332–404 (Methyl Tertiary Butyl Ether (MTBE): Conditions Affecting the Domestic Industry).

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 8, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–6156 Filed 3–9–99; 2:37 pm]

BILLING CODE 7020–02–U

DEPARTMENT OF JUSTICE

Justice Management Division; Information Resources Management/ Telecommunications Services Staff Meeting of the Global Criminal Justice Information Network Advisory Committee

AGENCY: Justice Management Division, Information Resources Management, Telecommunications Services Staff, Justice.

ACTION: Notice.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Global Criminal Justice Information Network Advisory Committee meeting will be held March 25–26, 1999. The Committee will meet from 9:00 am–5:00 pm on 3/25, 9:00 am–1:00 pm on 3/26 at the Crystal City Marriott Hotel, located at 1999 Jefferson Davis Highway, Arlington, VA 22202 (703) 413–5500. The Global Criminal Justice Information Network Advisory Committee will meet to discuss current issues and prepare a report for the Attorney General.

This meeting will be open to the public. Any interested person must register 10 days in advance of the meeting. Registrations will then be accepted on a space available basis. For information on how to register, contact Kathy Albert, the Designated Federal Employee (DFE), 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 514–3337. Interested persons whose registrations have been accepted may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the DFE.

If you need special accommodations due to a disability, please contact Melissa Rashid (703) 413–6547 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Kathy Albert, the DFE, 901 E Street NW, Suite 510, Washington, DC 20530, or call (202) 514–3337.

Dated: March 2, 1999.

Kathy Albert,

Global Network Coordinator, Telecommunications Services Staff, Information Resources Management, Justice Management Division, Department of Justice.

[FR Doc. 99–6056 Filed 3–10–99; 8:45 am]

BILLING CODE 4410–DN–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Request for Approval of New Collection; Comment Request

ACTION: Notice of Information Collection Under Review; FBI National Academy Training Needs Assessment.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** on January 8, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the office of Management and Budget, office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:

(3) Enhance the quality, utility, and clarity of the information to be collected, and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* FBI National Academy Training Needs Assessment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no assigned form number; Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local law Enforcement Executives. This form is used to collect respondent perceptions of the training needs of their agency personnel who will be attending the FBI National Academy. This will enable enhancements to the FBI National Academy curriculum to address anticipated training needs.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1751 responses at 30 minutes (0.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 860.5 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact James Delaverson 703–640–1138 or (703) 632–3220 after January 22, 1999), Program Manager, Office of Information and Learning Resources, Research and Analysis Center, FBI Academy, Quantico, Virginia 22135. Additionally, comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. James Delaverson.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: March 8, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–6020 Filed 3–10–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Agency Information Collection Activities: Renewal of Expired Collection: Comment Request

ACTION: Notice of information collection under review; Postgraduate evaluation of the FBI National Academy.

The Department of Justice, Federal Bureau of Investigation, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 8, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of an expired collection approval.

(2) *Title of the Form/Collection:* Postgraduate Evaluation of the FBI National Academy.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* There is no assigned form number; Federal Bureau of Investigation, FBI Academy.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State and Local Law Enforcement Officers. This form is used to collect feedback from graduates of the FBI National Academy regarding the relevance of the courses offered during training.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,553 responses at 45 minutes (0.75) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,914.75 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact James Delaverson 703–632–3220, Program Manager, Office of Information and Learning Resources, Research and Analysis Center, FBI Academy, Quantico, Virginia 22135. Additionally, comments and/or suggestions regarding the item contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. James Delaverson.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, suite 850, Washington Center, 1001 G Street N.W., Washington DC 20530.

Dated: March 8, 1999.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–6021 Filed 3–10–99; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1960–98; AG Order No. 2211–99]

RIN 1115–AE26

Designation of Guinea-Bissau Under Temporary Protected Status

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice designates Guinea-Bissau for the Temporary Protected Status (TPS) program under section 244(b)(1) of the Immigration and Nationality Act, as amended (the Act). The Attorney General is authorized to grant TPS in the United States to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon a finding that such states are experiencing ongoing civil strife, environmental disaster, or other extraordinary and temporary conditions.

EFFECTIVE DATES: This designation is effective on March 11, 1999 and will remain in effect until March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Michale Valverde, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., Room 3214, Washington, DC 20536, telephone (202) 514–3228.

SUPPLEMENTARY INFORMATION:

Background

Who is Eligible for TPS?

Based on a thorough review by the Departments of State and Justice, the Attorney General finds that there is ongoing civil strife in Guinea-Bissau which constitutes extraordinary and temporary conditions that prevent aliens who are nationals from returning to Guinea-Bissau is safety. The Attorney General further finds that permitting such aliens to remain temporarily in the United States is not contrary to the national interest of the United States.

Nationals of Guinea-Bissau (or aliens having no nationality who last habitually resided in Guinea-Bissau) who have been continuously physically present and have continuously resided in the United States since March 11, 1999 may apply for the TPS within the registration period which begins on March 11, 1999 and ends on March 10, 2000.

Any national of Guinea-Bissau who has already applied for, or plans to apply for, asylum by whose asylum application has not yet been approved may also apply for TPS. An application for TPS does not preclude or adversely affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's ability to register for TPS, although the grounds of denial may also lead to denial of TPS. For example, an alien who has been convicted of an aggravated felony is not eligible for asylum or TPS.

An alien who is granted TPS is eligible to register for any extension of the TPS program that may be made. However, nationals of Guinea-Bissau who do not file a TPS application during the initial registration period will have to satisfy the requirements for late initial registration under 8 CFR 244.2(f)(2) in order to be eligible for TPS registration during any extension of designation. The requirements for late initial registration specify that the applicant must have been in valid status during the initial registration period and must register no later than thirty (30) days from the expiration of such status.

How do I Register for TPS?

Nationals of Guinea-Bissau may register for TPS by filing an Application

for Temporary Protected Status, Form I–821, with a fifty dollar ($50) filing fee. The Application for Temporary Protected Status, Form I–821, must always be accompanied by an Application for Employment Authorization, Form I–765, which is required for data-gathering purposes. The TPS applicants who already have employment authorization, including some asylum applicants, and those who have no need for employment authorization, such as minor children, need pay only the I–821 fee although they must complete and file the I–765. In all other cases, the appropriate filing fee, one hundred dollars ($100), must accompany Form I–765, unless a properly documented fee waiver request under 8 CFR 244.20 is submitted to the Immigration and Naturalization Service or the applicant does not wish to obtain employment authorization.

Notice of Designation of Guinea-Bissau Under Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that:

(1) There exists ongoing civil strife in Guinea-Bissau which constitutes extraordinary and temporary conditions that prevent aliens who are nationals (as well as aliens having no nationality who last habitually resided in Guinea-Bissau) from returning to Guinea-Bissau in safety; and

(2) Permitting nationals of Guinea-Bissau (or aliens having no nationality who last habitually resided in Guinea-Bissau) to remain temporarily in the United States is not contrary to the national interest of the United States.

Accordingly, it is ordered as follows:

(1) Guinea-Bissau is designated for TPS under section 244(b)(1)(C) of the Act. Nationals of Guinea-Bissau (or aliens having no nationality who last habitually resided in Guinea-Bissau) who have been continuously physically present and have continuously resided in the United States since March 11, 1999 may apply for TPS within the registration period, which begins on March 11, 1999 and ends on March 10, 2000.

(2) I estimate that there are no more than 300 nationals of Guinea-Bissau (or aliens having no nationality who last habitually resided in Guinea-Bissau) in the United States who are eligible for TPS.

(3) Except as may otherwise be provided, applications for TPS by nationals of Guinea-Bissau (or aliens having no nationality who last habitually resided in Guinea-Bissau) must be filed pursuant to the provisions of 8 CFR part 244. Aliens who wish to apply for TPS must file an Application for Temporary Protected Status, Form I–821, together with an Application for Employment Authorization, Form I–765, during the registration period, which begins on March 11, 1999 and will remain in effect until March 10, 2000.

(4) A fee prescribed in 8 CFR 103.7(b)(1) (fifty dollars ($50)) will be charged for each Application for Temporary Protected Status, Form I–821, filed during the registration period.

(5) The fee prescribed in 8 CFR 103.7(b)(1) (one hundred dollars ($100)) will be charged for each Application for Employment Authorization, Form I–765, filed by an alien requesting employment authorization. An alien who does not wish to request employment authorization must nevertheless file Form I–765, together with Form I–821, for data gathering purposes. In such cases, however, no fee needs to be submitted with Form I–765.

(6) Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before March 10, 2000, the conditions in Guinea-Bissau to determine whether the conditions for designation of Guinea-Bissau under the TPS program continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. If there is an extension of designation, late initial registration for TPS shall be allowed only pursuant to the requirements of 8 CFR 244.2(f)(2).

(7) Information concerning the TPS program for nationals of Guinea-Bissau (or aliens having no nationality who last habitually resided in Guinea-Bissau) will be available at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 5, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–6055 Filed 3–10–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1215]

RIN 1121–ZB49

National Institute of Justice Corrections and Law Enforcement Family Support Solicitation for Research, Evaluation, Development, and Demonstration Projects

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice ''FY 1999 Corrections and Law Enforcement Family Support Solicitation for Research, Evaluation, Development and Demonstration Projects.''

DATES: Due date for receipt of proposals is close of business June 14, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, §§ 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

The National Institute of Justice (NIJ) requests proposals for research, evaluation, development, and demonstration projects in response to Title XXI of the Violent Crime Control and Law Enforcement Act of 1994 in which Congress established the Law Enforcement Family Support Program. In support of this program NIJ is calling for proposals to:

1. Develop, demonstrate, and test innovative stress prevention or treatment programs for State or local law enforcement and/or correctional personnel and their families.

2. Conduct research on the nature, extent, causes, and consequences of stress experienced by correctional or law enforcement officers and their families, or to evaluate the effectiveness of law enforcement and/or correctional officer stress prevention or treatment programs.

3. Develop, demonstrate, and test effective ways to change law enforcement or correctional agency policies, practices, and organizational culture to ameliorate stress experienced by law enforcement and correctional officers and their families.

Grants totaling approximately $830,000 will be made available under this solicitation for periods of generally 18 months, although longer award periods may be considered. The Act specifies that a grant to a State or local law enforcement agency may not exceed $100,000 and that a grant to an organization representing law enforcement or correctional personnel may not exceed $250,000. Funds under this program may be used to supplement existing stress-reduction or employee assistance programs.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of ''Corrections and Law Enforcement Family Support Solicitation for Research, Evaluation, Development, and Demonstration Projects'' (refer to document no. SL000329). For World Wide Web access, connect to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–6049 Filed 3–10–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mountain Coal Company

[Docket No. M–1999–001–C]

Mountain Coal Company, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use portable diesel generators to move and operate electric powered mobile equipment and pumps throughout the mine. The petitioner has outlined in this petition specific requirements that would be followed as an alternative for existing and future generators. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Mountain Coal Company

[Docket No. M–1999–002–C]

Mountain Coal Company, P.O. Box 591, 5174 Highway 133, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.901 (protection of low- and medium-voltage three-phase circuits used underground) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use portable diesel generators to move and operate electric powered mobile equipment and pumps throughout the mine. The petitioner has outlined in this petition specific requirements that would be followed as an alternative for existing and future generators. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Peabody Coal Company

[Docket No. M–1999–003–C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Due to hazardous conditions near the return air course inby and outby the seals, traveling the area to conduct weekly examinations would create a diminution of safety to the miners. The petitioner proposes to establish evaluation points to monitor the affected area and have a certified person monitor the evaluation points on a weekly basis to determine the volume of air, and the methane and oxygen concentrations; and to record all examination results in a book maintained on the surface of the mine. The petitioner states that monitoring of these evaluation points would determine the atmosphere immediately prior to up-wind and immediately after down-wind the seals. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Peabody Coal Company

[Docket No. M–1999–004–C]

Peabody Coal Company, 1951 Barrett Court, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Camp No. 1 Mine (I.D. No. 15–02709) located in Union County, Kentucky. Due to hazardous conditions near the return air course inby and outby the seals, traveling the area to conduct weekly examinations would create a diminution of safety to the miners. The petitioner proposes to establish evaluation points to monitor the affected area and have a certified person monitor the evaluation points on a weekly basis to determine the volume of air, and the methane and oxygen concentrations; and to record all examination results in a book maintained on the surface of the mine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Canyon Fuel Company, LLC

[Docket No. M–1999–005–C]

Canyon Fuel Company, LLC, P.O. Box 1029, Wellington, Utah 84542 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Dugout Canyon Mine (I.D. No. 42–01890) located in Carbon County, Utah. The petitioner proposes to use an alternative method of arranging its sprinkler system. The petitioner proposes a modification based on the following terms: (i) Each water sprinkler system would consist of a single overhead pipe water sprinkler system with automatic sprinklers located not more than 10 feet apart for the water discharged from the sprinklers to cover the 50 feet of fire-resistant belt or 150 feet of non fire-resistant belt adjacent to the belt drive and one or more automatic sprinklers located 10 feet apart for water discharged from the sprinkler(s) to cover the drive motor(s), belt takeup, electrical controls, and gear reducing unit for each belt drive; (ii) Each water sprinkler would be in installed for the clearance between the center of the top belt and the roof to permit the single overhead pipe system to be installed in accordance with adequate height, and where the clearance between the center of the top belt and the roof does not permit the installation of the single overhead pipe system directly over the belt, the single overhead pipe system would be installed in accordance with restricted height; (iii) The residual pressure in each sprinkler system would not be less than 10 psi with any three sprinklers open, and an adequate supply of water to provide a constant flow for at least 10 minutes with all sprinklers functioning; (iv) Each water sprinkler system would be equipped with a flush-out connection and a manual shut-off valve; and (v)

Each automatic sprinkler would be a standard ½-inch orifice pendant-type with fusible link actuation temperature for each sprinkler between 200 and 230 degrees Fahrenheit. The petitioner proposes to conduct a functional test annually for each water sprinkler system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to ''comments@msha.gov'', or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before April 12, 1999. Copies of these petitions are available for inspection at that address.

Dated: March 5, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–6038 Filed 3–10–99; 8:45 am]

BILLING CODE 4510–43–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* 10 CFR Part 32—Specific Domestic Licenses to Manufacture or Transfer Certain Items Containing Byproduct Material.

2. *Current OMB Approval Number:* 3150–0001.

3. *How often the collection is required:* There is a one-time submittal of information to receive a license. Renewal applications are submitted every 10 years. In addition, recordkeeping must be performed on an on-going basis, and reports of transfer of byproduct material must be reported every 10 years.

4. *Who is required or asked to report:* All specific licensees who manufacture or initially transfer items containing byproduct material for sale or distribution to general licensees or persons exempt from licensing.

5. *The number of annual respondents:* 265 NRC licensees and 333 Agreement State licensees.

6. *The number of hours needed annually to complete the requirement or request:* 53,333 hours or 201.26 hours per NRC licensee and 95,306.9 hours or 286.21 hours per Agreement State licensee.

7. *Abstract:* 10 CFR Part 32 establishes requirements for specific licenses for the introduction of byproduct material into products or materials and transfer of the products or materials to general licensees or persons exempt from licensing. It also prescribes requirements governing holders of the specific licenses. Some of the requirements are information which must be submitted in an application for a specific license, records which must be kept, reports which must be submitted, and information which must be forwarded to general licensees and persons exempt from licensing. In addition, 10 CFR Part 32 prescribes requirements for the issuance of certificates of registration (concerning radiation safety information about a product) to manufacturers or initial transferors of sealed sources and devices. Submission or retention of the information is mandatory for persons subject to the 10 CFR Part 32 requirements. The information is used by NRC to make licensing and other regulatory determinations concerning the use of radioactive byproduct material in products and devices.

Submit, by May 10, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, or by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 5th day of March 1999.

For the U. S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–6060 Filed 3–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Amendment to Certificate of Compliance GDP–2 for the U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant, Piketon, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) There is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs. The basis for this determination for the amendment request is shown below.

The Nuclear Regulatory Commission (NRC) staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and

security, and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation.

The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22(c)(19). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

The United States Enrichment Corporation (USEC) or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) The interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: December 23, 1998.

Brief description of amendment: The amendment involves deleting a commitment in the PORTS Compliance Plan Issue A.2, Action 3, regarding physical modifications to the existing UF6 cylinder sampling autoclaves and installation of new UF6 cylinder sampling autoclaves at PORTS. When Issue A.2 was developed, it was determined that to meet NRC sampling requirements for 2.5-ton enriched UF6 cylinders received from Russian plants, it would be necessary to install additional sampling autoclaves at PORTS. An alternative scheme was subsequently implemented as of April 1998, whereby a USEC-contractor would witness the filling of sample cylinders at the same time the material was also being placed into a product cylinder in Russia. This allows USEC to not have to draw liquid UF6 samples at PORTS from Russian receipts and thereby reduces the need for additional autoclave sampling capacity at PORTS.

Basis for finding of no significance:

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

The proposed amendment, which involves deleting a commitment regarding physical modifications to UF6 sampling autoclaves at PORTS would not increase the amounts of any effluents that may be released offsite or result in any impact to the environment.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The proposed amendment does not introduce operations that could significantly increase individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed change will not result in any construction, therefore, there will be no construction impact.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

The proposed amendment reduces the probability of a UF6 release by reducing the number of liquid UF6 operations at PORTS. Therefore, the proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed amendment involves deleting a commitment to install additional UF6 sampling capacity at PORTS. Therefore, this change will not result in the possibility of a new or different kind of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed amendment reduces the probability of a UF6 release by reducing the number of liquid UF6 operations at PORTS. Therefore, the proposed change does not represent a reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

The proposed amendment only involves deleting a commitment to install additional UF6 sampling capacity at PORTS. USEC has committed to implementing an alternative witnessed UF6 cylinder sampling program. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective upon issuance by NRC.

Certificate of Compliance No. GDP–2: This amendment will revise Issue A.2 of the PORTS Compliance Plan.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 3rd day of March 1999.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–6061 Filed 3–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company, The Connecticut Light and Power Company, and The Western Massachusetts Electric Company; Millstone Nuclear Power Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Title 10 of the Code of Federal Regulations, Part 50 (10 CFR Part 50), Appendix R, Sections III.G and III.J to Facility Operating License No. DPR–65, issued to the Northeast Nuclear Energy Company, et al., (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit 2, located in Waterford, Connecticut.

Environmental Assessment

Identification of the Proposed Action

Three fire areas at Millstone Nuclear Power Station, Unit 2 do not fully meet the requirements of 10 CFR Part 50, Appendix R, Section III.G. These three areas are the Intake Structure (Appendix R Fire Area R–16), the East 480 Volt Switchgear Room (Appendix R Fire Area R–11), and the Charging Pump Room (Appendix R Fire Area R–4).

The Intake Structure and East 480 Volt Switchgear Room are classified as alternate shutdown areas and are required to meet 10 CFR Part 50, Appendix R, Section III.G.3. The last paragraph of Section III.G.3 requires that a fire detection and a fixed fire suppression system be installed in the area, room, or zone under consideration. The Intake Structure and East 480 Volt Switchgear Rooms do not have fixed fire suppression systems. NNECO has requested exemptions to these requirements because the configuration of the intake structure and East 480 Volt Switchgear rooms, the combustibles loading, the administrative procedures that limit and control transient combustibles, the in-place fire detection systems, the fire brigade and availability of manual fire suppression equipment, and the ability to provide AC power from Millstone, Unit 1 allow the licensee to meet the underlying purpose of the rule. The underlying purpose of the requirement to install a fixed fire suppression system in these areas, as required by Section III.G.3 of Appendix R, is to limit fire damage to the dedicated or alternate shutdown capability.

The Charging Pump Room is required to meet 10 CFR part 50, appendix R, Section III.G.2 requirements. Section III.G.2 requires separation of cables and equipment and associated non-safety circuits of redundant trains by one of three means (Section III.G.2a, b, or c). NNECO requests an exemption from this requirement because the Charging Pump Area does not fully meet any of the three options. NNECO's basis for the exemption request is that the configuration of the charging pump room, the combustibles loading, the cable separation modifications, the in-place fire detection systems, the fire brigade and availability of manual fire suppression equipment, and preplanned fire fighting strategies allow the licensee to meet the underlying purpose of the rule. The underlying purpose of the three applicable options under Section III.G.2, is to provide reasonable assurance that at least one train of equipment relied on to achieve and maintain safe shutdown is free of fire damage.

The licensee also requested a fourth exemption from the requirements of 10 CFR part 50, appendix R, Section III.J to the extent that it requires emergency lighting units with at least an 8-hour battery power supply to light yard area access and egress routes for operation of safe shutdown equipment. The licensee based this exemption request primarily on in-place security lighting allowing the licensee to meet the underlying purpose of the rule. The underlying purpose of the rule is to ensure that lighting of sufficient duration and reliability is provided to allow operation of equipment required for post-fire, safe shutdown of the reactor.

The proposed action is in accordance with the licensee's application for exemption dated July 31, 1998, as supplemented by letters dated September 24 and November 13, 1998.

The Need for the Proposed Action

The proposed action is needed for the licensee to avoid the burden of full compliance with the regulations. Full compliance with the regulations would require the licensee to install fire suppression systems in the case of the Intake Structure and East 480 Volt Switchgear Rooms; and, a cable separation, fire suppression and/or fire barrier modification in the case of the Charging Pump Room. In the case of the yard area, full compliance would require battery powered lights to illuminate a large outdoor area for an 8-hour period. It is not considered practical to illuminate large outdoor areas with battery powered lighting for an 8-hour period. The licensee already has diesel powered security lighting in the same area and portable lighting equipment is also available. As noted above, the underlying purpose of the rule can be met without the burden of installing this equipment.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action. The underlying purpose of the rules the licensee is requesting to be exempted from is to ensure that the plant can be safely shut down in the event of a fire.

For the Intake Structure, based on the amount of combustible loading and combustible loading configuration, the licensee's administrative procedures that limit and control transient combustibles, the existing fire detection system, and the expected fire brigade response and subsequent extinguishment using manual equipment, the possibility of a fire developing to involve all three of the service water pumps is not considered likely. However, if this were to occur, the loss of all three of the service water pumps would not adversely impact the safe shutdown capability of the plant, based on the ability to provide power via a backfeed from Millstone Unit 1, and the ability of the plant to make necessary repairs to a service water pump, strainer, and power cable to achieve cold shutdown. The licensee stated that the Appendix R safe shutdown strategy for a fire in the Intake Structure accounts for the loss of all three service water pumps. In addition, the configuration for alternate shutdown in the Intake Structure had been previously found acceptable in the NRC SE dated July 17, 1990. The configuration has not changed since this approval.

For the East 480V Switchgear Room, based on the amount of combustible loading and combustible loading configuration, the licensee's administrative procedures that limit and control transient combustibles, the existing fire detection system, the expected fire brigade response and subsequent fire extinguishment using manual fire suppression equipment, and the close proximity to the Control Room, there is reasonable assurance that a fire would not involve the entire area or spread beyond the area. The loss of the equipment in the east 480V switchgear room does not adversely impact the safe shutdown capability of the plant based on the ability to provide power via a backfeed from Millstone Unit 1. In addition, the configuration for alternate shutdown in the east 480V switchgear room has previously been

found acceptable in the NRC SE, dated July 17, 1990. The configuration has not changed since this approval.

For the Charging Pump Room, based on the configuration of the Charging Pump Room, the combustibles loading, the in-place fire detection systems, the expected fire brigade response and subsequent fire extinguishment using manual fire suppression equipment, and preplanned fire fighting strategies there is reasonable assurance that a fire would not cause the loss of all charging pumps.

Based on the availability and reliability of the security lighting and the availability of portable lighting, there is reasonable assurance that the access and egress routes through the yard area that are relied on for safe shutdown of the facility can be accessed in the event of a fire.

On the basis of its review, the staff concludes that the licensee will still have the capability to safely shut down the plant, in the event of a fire, after these exemptions have been granted.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 2.

Agencies and Persons Consulted

In accordance with its stated policy, on February 19, 1999, the staff consulted with the Connecticut State official, Dwayne Gardner of the Division of Radiation, Department of Environmental Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 31, 1998, as supplemented by letters dated September 24 and November 13, 1998, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, CT 06360 and Waterford Public Library, 49 Rope Ferry Road, Waterford, CT 06385.

Dated at Rockville, Maryland, this 5th day of March 1999.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate I–2, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–6059 Filed 3–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

State of Ohio: NRC Staff Assessment of a Proposed Agreement Between the Nuclear Regulatory Commission and the State of Ohio

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of a proposed Agreement with the State of Ohio.

SUMMARY: By letter dated June 22, 1998, former Governor George V. Voinovich of Ohio requested that the U. S. Nuclear Regulatory Commission (NRC) enter into an Agreement with the State as authorized by Section 274 of the Atomic Energy Act of 1954, as amended (Act). Under the proposed Agreement, the Commission would give up, and Ohio would take over, portions of the Commission's regulatory authority exercised within the State. As required by the Act, NRC is publishing the proposed Agreement for public comment. NRC is also publishing the summary of an assessment by the NRC staff of the Ohio regulatory program. Comments are requested on the proposed Agreement, especially its effect on public health and safety. Comments are also requested on the NRC staff assessment, the adequacy of the Ohio program staff, and the State's commitments concerning the program staff, as discussed in this notice.

The proposed Agreement would release (exempt) persons who possess or use certain radioactive materials in Ohio from portions of the Commission's regulatory authority. The Act requires that NRC publish those exemptions. Notice is hereby given that the pertinent exemptions have been previously published in the **Federal Register** and are codified in the Commission's regulations as 10 CFR Part 150.

DATES: The comment period expires April 12, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission cannot assure consideration of comments received after the expiration date.

ADDRESSES: Written comments may be submitted to Mr. David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Washington, DC 20555–0001. Copies of comments received by NRC may be examined at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC. Copies of the proposed Agreement, copies of the request for an Agreement by the Governor of Ohio including all information and documentation submitted in support of the request, and copies of the full text of the NRC staff assessment are also available for public inspection in the NRC's Public Document Room.

FOR FURTHER INFORMATION CONTACT: Richard L. Blanton, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Telephone (301) 415–2322 or e-mail rlb@nrc.gov.

SUPPLEMENTARY INFORMATION: Since Section 274 of the Act was added in 1959, the Commission has entered into Agreements with 30 States. The Agreement States currently regulate approximately 16,000 agreement material licenses, while NRC regulates approximately 5800 licenses. Under the proposed Agreement, approximately 550 NRC licenses will transfer to Ohio. NRC periodically reviews the

performance of the Agreement States to assure compliance with the provisions of Section 274.

Section 274e requires that the terms of the proposed Agreement be published in the **Federal Register** for public comment once each week for four consecutive weeks. This notice is being published in fulfillment of the requirement.

I. Background

(a) Section 274d of the Act provides the mechanism for a State to assume regulatory authority, from the NRC, over certain radioactive materials [1] and activities that involve use of the materials. In a letter dated June 22, 1998, Governor Voinovich certified that the State of Ohio has a program for the control of radiation hazards that is adequate to protect public health and safety within Ohio for the materials and activities specified in the proposed Agreement, and that the State desires to assume regulatory responsibility for these materials and activities. Included with the letter was the text of the proposed Agreement, which is shown in Appendix A to this notice.

The radioactive materials and activities (which together are usually referred to as the ''categories of materials'') which the State of Ohio requests authority over are: (1) the possession and use of byproduct materials as defined in Section 11e.(1) of the Act; (2) the generation, possession, use, and disposal of byproduct materials as defined in Section 11e.(2) of the Act; (3) the possession and use of source materials; (4) the possession and use of special nuclear materials in quantities not sufficient to form a critical mass; (5) the regulation of the land disposal of byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear waste materials received from other persons; and (6) the evaluation of radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

(b) The proposed Agreement contains articles that:

—Specify the materials and activities over which authority is transferred;
—Specify the activities over which the Commission will retain regulatory authority;
—Continue the authority of the Commission to safeguard nuclear materials and restricted data;
—Commit the State of Ohio and NRC to exchange information as necessary to maintain coordinated and compatible programs;
—Provide for the reciprocal recognition of licenses;
—Provide for the suspension or termination of the Agreement;
—Provide for the transfer of any financial surety funds collected by Ohio for reclamation or long-term surveillance of sites for the disposal of byproduct materials (as defined in Section 11e.(2) of the Act) to the United States if custody of the material and the disposal site are transferred; and
—Specify the effective date of the proposed Agreement. The Commission reserves the option to modify the terms of the proposed Agreement in response to comments, to correct errors, and to make editorial changes. The final text of the Agreement, with the effective date, will be published after the Agreement is approved by the Commission, and signed by the Chairman of the Commission and the Governor of Ohio.

(c) Ohio currently regulates the users of naturally-occurring and accelerator-produced radioactive materials. The regulatory program is authorized by law in Section 3748 of the Ohio Revised Code. Subsection 3748.03 provides the authority for the Governor to enter into an Agreement with the Commission.

Ohio law contains provisions for the orderly transfer of regulatory authority over affected licensees from NRC to the State. After the effective date of the Agreement, licenses issued by NRC would continue in effect as Ohio licenses until the licenses expire or are replaced by State issued licenses. NRC licenses transferred to Ohio which contain requirements for decommissioning and express an intent to terminate the license when decommissioning has been completed in accordance with a Commission approved decommissioning plan will continue as Ohio licenses and will be terminated by Ohio when the Commission approved decommissioning plan has been completed.

(d) As described below, the proposed Agreement will be signed only after the fulfillment of commitments by Ohio to hire, train, and qualify a sufficient number of professional/technical staff. Contingent on the fulfilment of these commitments, the NRC staff assessment finds that the Ohio program is adequate to protect public health and safety, and is compatible with the NRC program for the regulation of agreement materials.

II. Summary of the NRC Staff Assessment of the Ohio Program for the Control of Agreement Materials

NRC staff has examined the Ohio request for an Agreement with respect to the ability of the radiation control program to regulate agreement materials. The examination was based on the Commission's policy statement *''Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement''* (referred to herein as the ''NRC criteria'') (46 FR 7540; January 23, 1981, as amended).

(a) Organization and Personnel. The agreement materials program will be located within the existing Bureau of Radiation Protection (Bureau) of the Ohio Department of Health. The program will be responsible for all regulatory activities related to the proposed Agreement.

The educational requirements for the Bureau staff members are specified in the Ohio State personnel position descriptions, and meet the NRC criteria with respect to formal education or combined education and experience requirements. All current staff members hold at least bachelor's degrees in physical or life sciences, or have a combination of education and experience at least equivalent to a bachelor's degree. Several staff members hold advanced degrees, and all staff members have had additional training plus working experience in radiation protection. Supervisory level staff have more than ten years working experience each in radiation protection.

The Bureau currently has staff vacancies, which it is actively recruiting to fill. In response to NRC comments, the Bureau performed, and NRC staff reviewed, an analysis of the expected Bureau workload under the proposed Agreement. Based on the analysis, Ohio has made three commitments. First, the Bureau will employ a staff of at least 21 full-time professional/technical employees for the agreement materials program. Second, the distribution of the qualifications of the individual staff members will be balanced to the distribution of categories of licensees transferred from NRC. For example, there will be enough inspectors trained

[1] The radioactive materials, sometimes referred to as ''agreement materials,'' are: (a) byproduct materials as defined in Section 11e.(1) of the Act; (b) byproduct materials as defined in Section 11e.(2) of the Act; (c) source materials as defined in Section 11z. of the Act; and (d) special nuclear materials as defined in Section 11aa. of the Act, restricted to quantities not sufficient to form a critical mass.

and qualified to inspect industrial radiography operations that the program will be able to inspect all of the industrial radiography licensees transferred from NRC without developing a backlog of overdue inspections. Third, each individual on the staff will be qualified in accordance with the Bureau's training and qualification procedure (including use of interim qualification) to function in the areas of responsibility to which the individual is assigned. In the case of individuals assigned to review radiation safety information on sealed sources or devices containing byproduct materials as defined in Section 11e.(1) of the Act, source, or special nuclear materials, this commitment includes assuring that the individuals will be able to:

—Understand and interpret, if necessary, appropriate prototype tests that ensure the integrity of the products under normal, and likely accidental, conditions of use,
—Understand and interpret test results,
—Read and understand blueprints and drawings,
—Understand how the device works and how safety features operate,
—Understand and apply appropriate regulations,
—Understand the conditions of use,
—Understand external dose rates, source activities, and nuclide chemical form, and
—Understand and utilize basic knowledge of engineering materials and their properties.

(b) Legislation and Regulations. The Ohio Department of Health is designated by law in Chapter 3748 of the Ohio Revised Code to be the radiation control agency. The law provides the Department the authority to issue licenses, issue orders, conduct inspections, and to enforce compliance with regulations, license conditions, and orders. Licensees are required to provide access to inspectors. The Public Health Council is authorized to promulgate regulations.

The law requires the Public Health Council to adopt rules that are compatible with the equivalent NRC regulations and that are equally stringent to, or to the extent practicable more stringent than, the equivalent NRC regulations. The Council has adopted, by reference, the NRC regulations in Title 10 of the Code of Federal Regulations that were in effect on October 19, 1998. The adoption by reference is contained in Chapter 3701–39–021 of the Ohio Administrative Code (OAC). The Board of Health has extended the effect of the rules, where appropriate, to apply to naturally occurring radioactive materials and to radioactive materials produced in particle accelerators, in addition to agreement materials.

Ohio rule 3701–39–021 (A) specifies that references to the NRC shall be construed as references to the Director of the Department of Health. It is noted, however, that Ohio has adopted most of the NRC regulations as entire Parts, including sections that address regulatory matters reserved to the Commission. Ohio has adopted a provision in Rule 3701–39–021 (A) excepting such sections from being construed as enforced by the Director of the Department of Health. The OAC also contains a provision to avoid interference with licensees when they are complying with regulatory requirements which the Act specifies NRC must enforce and when they are complying with NRC regulatory requirements from which the State licensees have not been exempted by the proposed Agreement. The NRC staff concludes that Ohio will not attempt to enforce the regulatory matters reserved to the Commission. In accordance with NRC Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs,'' this approach is considered compatible.

The NRC staff review verified that the Ohio rules contain all of the provisions that are necessary in order to be compatible with the regulations of the NRC on the effective date of the Agreement between the State and the Commission. The adoption of the NRC regulations by reference assures that the standards will be uniform.

The Ohio regulations are different from the NRC regulations with respect to the decommissioning of a licensed facility and the termination of the license. Current NRC regulations permit a license to be terminated when the facility has been decommissioned, i.e., cleaned of radioactive contamination, such that the residual radiation will not cause a total effective dose equivalent greater than 25 millirem per year to an average member of the group of individuals reasonably expected to receive the greatest exposure. Normally, the NRC regulations require that the 25 millirem dose constraint be met without imposing any restrictions regarding the future use of the land or buildings of the facility (''unrestricted release''). Under certain circumstances, NRC regulations in 10 CFR Part 20, Subpart E, allow a license to be terminated if the 25 millirem dose constraint is met with restrictions on the future use (''restricted release''). Ohio law does not allow a license to be terminated under restricted release. Ohio will instead issue special ''decommissioning-possession only'' licenses as an alternative to license termination under restricted release. The Commission has concluded that Ohio's approach, although different, is compatible.

(c) Storage and Disposal. Ohio has also adopted, by reference, the NRC requirements for the storage of radioactive material, and for the disposal of radioactive material as waste. The waste disposal requirements cover both the disposal of waste generated by the licensee and the disposal of waste generated by and received from other persons.

(d) Transportation of Radioactive Material. Ohio has adopted the NRC regulations in 10 CFR Part 71 by reference. Part 71 contains the requirements licensees must follow when preparing packages containing radioactive material for transport. Part 71 also contains requirements related to the licensing of packaging for use in transporting radioactive materials. Ohio will not attempt to enforce portions of the regulations related to activities, such as approving packaging designs, which are reserved to NRC.

(e) Recordkeeping and Incident Reporting. Ohio has adopted, by reference, the sections of the NRC regulations which specify requirements for licensees to keep records, and to report incidents or accidents involving materials.

(f) Evaluation of License Applications. Ohio has adopted, by reference, the NRC regulations that specify the requirements which a person must meet in order to get a license to possess or use radioactive materials. Ohio has also developed a licensing procedures manual, along with the accompanying regulatory guides, which are adapted from similar NRC documents and contain guidance for the program staff when evaluating license applications.

(g) Inspections and Enforcement. The Ohio radiation control program has adopted a schedule providing for the inspection of licensees as frequently as, or more frequently than, the inspection schedule used by NRC. The program has adopted procedures for the conduct of inspections, the reporting of inspection findings, and the report of inspection results to the licensees. The program has also adopted, by rule in the OAC, procedures for the enforcement of regulatory requirements.

(h) Regulatory Administration. The Ohio Department of Health is bound by requirements specified in State law for rulemaking, issuing licenses, and taking enforcement actions. The program has also adopted administrative procedures to assure fair and impartial treatment of

license applicants. Ohio law prescribes standards of ethical conduct for State employees.

(i) Cooperation with Other Agencies. Ohio law deems the holder of an NRC license on the effective date of the proposed Agreement to possess a like license issued by Ohio. The law provides that these former NRC licenses will expire either 90 days after receipt from the radiation control program of a notice of expiration of such license or on the date of expiration specified in the NRC license, whichever is later. In the case of NRC licenses that are terminated under restricted conditions pursuant to 10 CFR 20.1403 prior to the effective date of the proposed Agreement, Ohio deems the termination to be final despite any other provisions of State law or rule. For NRC licenses that, on the effective date of the proposed Agreement, contain a license condition indicating intent to terminate the license upon completion of a Commission approved decommissioning plan, the transferred license will be terminated by Ohio in accordance with the plan so long as the licensee conforms to the approved plan.

Ohio also provides for ''timely renewal.'' This provision affords the continuance of licenses for which an application for renewal has been filed more than 30 days prior to the date of expiration of the license. NRC licenses transferred while in timely renewal are included under the continuation provision. The OAC provides exemptions from the State's requirements for licensing of sources of radiation for NRC and U.S. Department of Energy contractors or subcontractors.

The proposed Agreement commits Ohio to use its best efforts to cooperate with the NRC and the other Agreement States in the formulation of standards and regulatory programs for the protection against hazards of radiation and to assure that Ohio's program will continue to be compatible with the Commission's program for the regulation of agreement materials. The proposed Agreement stipulates the desirability of reciprocal recognition of licenses, and commits the Commission and Ohio to use their best efforts to accord such reciprocity.

III. Staff Conclusion

Subsection 274d of the Act provides that the Commission shall enter into an agreement under subsection 274b with any State if:

(a) The Governor of the State certifies that the State has a program for the control of radiation hazards adequate to protect public health and safety with respect to the agreement materials within the State, and that the State desires to assume regulatory responsibility for the agreement materials; and

(b) The Commission finds that the State program is in accordance with the requirements of Subsection 274o, and in all other respects compatible with the Commission's program for the regulation of materials, and that the State program is adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

On the basis of its assessment, the NRC staff concludes that the State of Ohio meets the requirements of the Act, conditioned on completion of the commitments made in regard to the program staff. The State's program, as defined by its statutes, regulations, personnel, licensing, inspection, and administrative procedures, is compatible with the program of the Commission and adequate to protect public health and safety with respect to the materials covered by the proposed Agreement.

NRC will continue the formal processing of the proposed Agreement, however, the signing of the Agreement will be contingent upon the Bureau's completion of the staffing commitments.

IV. Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

Dated at Rockville, Maryland, this 5th day of March, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

An Agreement Between the United States Nuclear Regulatory Commission and the State of Ohio for the Discontinuance of Certain Commission Regulatory Authority and Responsibility Within the State Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

Whereas, The United States Nuclear Regulatory Commission (hereinafter referred to as the Commission) is authorized under Section 274 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the Act), to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission within the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to byproduct materials as defined in Sections 11e.(1) and (2) of the Act, source materials, and special nuclear materials in quantities not sufficient to form a critical mass; and,

Whereas, The Governor of the State of Ohio is authorized under Chapter 3748, of the Ohio Revised Code to enter into this Agreement with the Commission; and,

Whereas, The Governor of the State of Ohio certified on June 22, 1998, that the State of Ohio (hereinafter referred to as the State) has a program for the control of radiation hazards adequate to protect the health and safety of the public and to protect the environment with respect to the materials within the State covered by this Agreement, and that the State desires to assume regulatory responsibility for such materials; and,

Whereas, The Commission found on (date to be determined) that the program of the State for the regulation of the materials covered by this Agreement is compatible with the Commission's program for the regulation of such materials and is adequate to protect public health and safety; and,

Whereas, The State and the Commission recognize the desirability and importance of cooperation between the Commission and the State in the formulation of standards for protection against hazards of radiation and in assuring that State and Commission programs for protection against hazards of radiation will be coordinated and compatible; and,

Whereas, The Commission and the State recognize the desirability of reciprocal recognition of licenses, and of the granting of limited exemptions from licensing of those materials subject to this Agreement; and,

Whereas, This Agreement is entered into pursuant to the provisions of the Atomic Energy Act of 1954, as amended; Now Therefore, It is hereby agreed between the Commission and the Governor of the State of Ohio, acting in behalf of the State, as follows:

Article I

Subject to the exceptions provided in Articles II, IV, and V, the Commission shall discontinue, as of the effective date of this Agreement, the regulatory authority of the Commission in the State under Chapters 6, 7, and 8, and Section 161 of the Act with respect to the following materials:

1. Byproduct materials as defined in Section 11e.(1) of the Act;
2. Byproduct materials as defined in Section 11e.(2) of the Act;

3. Source materials;

4. Special nuclear materials in quantities not sufficient to form a critical mass;

5. The regulation of the land disposal of byproduct, source, or special nuclear waste materials received from other persons; and,

6. The evaluation of radiation safety information on sealed sources or devices containing byproduct, source, or special nuclear materials and the registration of the sealed sources or devices for distribution, as provided for in regulations or orders of the Commission.

Article II

A. This Agreement does not provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to:

1. The regulation of the construction and operation of any production or utilization facility or any uranium enrichment facility;

2. The regulation of the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

3. The regulation of the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in the regulations or orders of the Commission;

4. The regulation of the disposal of such other byproduct, source, or special nuclear material as the Commission from time to time determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed without a license from the Commission.

B. Notwithstanding this Agreement, the Commission retains the following authorities pertaining to byproduct material as defined in Section 11e.(2) of the Atomic Energy Act:

1. Prior to the termination of a State license for such byproduct material, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

2. The Commission reserves the authority to establish minimum standards governing reclamation, long-term surveillance or maintenance, and ownership of such byproduct material and of land used as a disposal site for such material.

Such reserved authority includes:

a. The authority to establish terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for such byproduct material, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

b. The authority to require that prior to termination of any license for such byproduct material or for any activity that results in the production of such material, title to such byproduct material and its disposal site be transferred to the United States or the State at the option of the State (provided such option is exercised prior to termination of the license);

c. The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph 2.b. in this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger public health, safety, welfare, or the environment;

d. The authority to require, in the case of a license, if any, for any activity that produces such byproduct material (which license was in effect on November 8, 1981), transfer of land and material pursuant to paragraph 2.b. in this section taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or the State;

e. The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such byproduct material and its disposal site, to undertake such monitoring, maintenance, and emergency measures as are necessary to protect public health and safety, and other actions as the Commission deems necessary; and

f. The authority to enter into arrangements as may be appropriate to assure Federal long-term surveillance or maintenance of such byproduct material and its disposal site on land held in trust by the United States for any Indian Tribe or land owned by an Indian Tribe and subject to a restriction against alienation imposed by the United States.

Article III

Notwithstanding this Agreement, the Commission may from time to time by rule, regulation, or order, require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license or an exemption from licensing issued by the Commission.

Article IV

This Agreement shall not affect the authority of the Commission under Subsection 161b or 161i of the Act to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material.

Article V

The Commission will cooperate with the State and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible. The State agrees to cooperate with the Commission and other Agreement States in the formulation of standards and regulatory programs of the State and the Commission for protection against hazards of radiation and to assure that the State's program will continue to be compatible with the program of the Commission for the regulation of materials covered by this Agreement.

The State and the Commission agree to keep each other informed of proposed changes in their respective rules and regulations, and to provide each other the opportunity for early and substantive contribution to the proposed changes.

The State and the Commission agree to keep each other informed of events, accidents, and licensee performance that may have generic implication or otherwise be of regulatory interest.

Article VI

The Commission and the State agree that it is desirable to provide reciprocal recognition of licenses for the materials listed in Article I licensed by the other party or by any other Agreement State. Accordingly, the Commission and the State agree to develop appropriate rules, regulations, and procedures by which such reciprocity will be accorded.

Article VII

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State, or upon request of the Governor of the State, may terminate or suspend all or part of this Agreement and reassert the licensing and regulatory authority vested in it under the Act if the Commission finds that (1) such termination or suspension is required to protect public health and safety, or (2) the State has not complied with one or more of the requirements of Section 274 of the Act. The Commission may also, pursuant to Section 274j of the Act, temporarily suspend all or part of this Agreement if, in the judgement of the Commission, an emergency situation exists requiring immediate action to protect public health and safety and the State has failed to take necessary steps. The Commission shall periodically review actions taken by the State under this Agreement to ensure compliance with Section 274 of the Act which requires a State program to be adequate to protect public health and safety with respect to the materials covered by this Agreement and to be compatible with the Commission's program.

Article VIII

In the licensing and regulation of byproduct material as defined in Section 11e.(2) of the Act, or of any activity which results in production of such material, the State shall comply with the provisions of Section 274o of the Act. If in such licensing and regulation, the State requires financial surety arrangements for reclamation or long-term surveillance and maintenance of such material,

A. The total amount of funds the State collects for such purposes shall be transferred to the United States if custody of such material and its disposal site is transferred to the United States upon termination of the State license for such material or any activity which results in the production of such material. Such funds include, but are not limited to, sums collected for long-term surveillance or maintenance. Such funds do not, however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed; and

B. Such surety or other financial requirements must be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long-term management of such byproduct material and its disposal site.

Article IX

This Agreement shall become effective on July 22, 1999, and shall remain in effect unless and until such time as it is terminated pursuant to Article VIII.

Done at Columbus, Ohio this (date to be determined).

For the United States Nuclear Regulatory Commission.

Chairman

For the State of Ohio

Governor

[FR Doc. 99–6057 Filed 3–10–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

SUMMARY: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection:

Continuing Disability Report; OMB 3220–0187

Under Section 2 of the Railroad Retirement Act, an annuity is not payable or is reduced for any month in which the annuitant works for a railroad or earns more than prescribed dollar amounts from either non-railroad employment or self-employment. Certain types of work may indicate an annuitant's recovery from disability. The provisions relating to the reduction or non-payment of annuities by reasons of work and an annuitant's recovery from disability for work are prescribed in 20 CFR 220.17–220.20. The RRB conducts continuing disability reviews (CDR) to determine whether annuitants continue to meet the disability requirements of the law. Provisions relating to when and how often the RRB conducts CDR's are prescribed in 20 CFR 220.186.

Form G–254, *Continuing Disability Report,* is currently used by the RRB to develop information for CDR determinations, including determinations prompted by a report of work, return to railroad service, allegations of medical improvement, or routine disability call-up. The RRB proposes to add a question regarding impairment related work expenses to the self-employment section of Form G–254. Editorial changes to the certification statement and other minor cosmetic changes are also proposed. In addition, the RRB proposes the addition of a new form to the information collection. Proposed Form G–254a, Continuing Disability Update Report, will be used to help identify disability annuitants whose work activity and/or recent medical history warrants a more extensive review and thus completion of Form G–254. One response is requested of each respondent to Form G–254 and G–254a. Completion is required to retain a benefit.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

Form #(s)	Annual responses	Time (Min)	Burden (hrs)
G–254	1,500	5–35	623
G–254a	2,000	5	167

ADDITIONAL INFORMATION OR COMMENTS: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–6039 Filed 3–10–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23725; 811–7995]

Sirrom Funding Corporation; Notice of Application

March 3, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Deregistration under section 8(f) of the

Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on January 22, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 500 Church Street, Suite 200, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant is a non-diversified closed-end management investment company incorporated in Delaware. On December 31, 1996, applicant filed a Notification of Registration under section 8(a) of the Act on Form N–8A, which was declared effective on the same date. As of December 31, 1998, applicants assets totaled $225.2 million.

2. Applicant is a wholly-owned subsidiary of Sirrom Capital Corporation (''Sirrom Capital''). Sirrom Capital is a closed-end, internally managed investment company that has elected to be treated as a business development company (''BDC'') pursuant to section 54 of the Act.

3. On January 6, 1999 Sirrom Capital entered into a merger agreement under which it will be acquired by The FINOVA Group Inc. (''FINOVA'') pursuant to a merger with a newly formed subsidiary of FINOVA (the ''parent Merger''). FINOVA is a financial services holding company that is exempt from regulation under the Act in reliance on section 3(c)(5) of the Act. Following the Parent Merger, Sirrom Capital will withdraw its election to be treated as a BDC.

4. The Parent Merger has been approved by the boards of directors, including all of the disinterested directors, of Sirrom Capital and applicant. The Parent Merger also is subject to approval by the shareholders of Sirrom Capital. The shareholders meeting to approve the Parent Merger is expected to take place on March 22, 1999. The proxy materials sent to the shareholders informed them, among other things, that applicant is seeking to deregister under the Act upon consummation of the Parent Merger. The Parent Merger is expected to be consummated on March 22, 1999.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if (a) its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and (b) it is not making and does not presently propose to make a public offering of its securities.

3. Applicant states that, upon consummation of the Parent Merger, applicant will be an indirect wholly-owned subsidiary of FINOVA. Thus, applicant states that its outstanding securities will be beneficially owned by 1 person, FINOVA. FINOVA is not an investment company or a company relying on section 3(c)(1) or section 3(c)(7) of the Act. For purposes of determining the number of beneficial owners of applicant's securities under section 3(c)(1), applicant states that it will not be required to ''look through'' FINOVA to its shareholders. Applicant further states that it is not making and does not presently propose to make a public offering of its securities. Thus, applicant seeks to deregister under the Act and rely on section 3(c)(1) of the Act. Applicant requests that the order of deregistration be issued only after the Parent Merger is consummated as described in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6003 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23724; 811–7779]

Sirrom Investments, Inc.; Notice of Application

March 3, 1999.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of application for Deregistration under section 8(f) of the Investment Company Act of 1940 (the ''Act'').

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on January 22, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on March 24, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549. Applicant, 500 Church Street, Suite 200, Nashville, Tennessee 37219.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 942–0584, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulations).

SUPPLEMENTARY INFORMATION: The following is a summary of the

application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicant's Representations

1. Applicant is a closed-end management investment company incorporated in Tennessee. On August 19, 1996, applicant filed a Notification of Registration under section 8(a) of the Act on Form N–8A, which was declared effective on the same date. As of December 31, 1998, applicant's assets totaled $254 million.

2. Applicant is a wholly-owned subsidiary of Sirrom Capital Corporation (''Sirrom Capital''). Sirrom Capital is a closed-end, internally managed investment company that has elected to be treated as a business development company (''BDC'') pursuant to section 54 of the Act.

3. On January 6, 1999 Sirrom Capital entered into a merger agreement under which it will be acquired by the FINOVA Group Inc. (''FINOVA'') pursuant to a merger with a newly formed subsidiary of FINOVA (the ''Parent Merger''). FINOVA is a financial services holding company that is exempt from regulation under the Act in reliance on section 3(c)(5) of the Act. Following the Parent Merger, Sirrom Capital will withdraw its election to be treated as a BDC.

4. The Parent Merger has been approved by the boards of directors, including all of the disinterested directors, of Sirrom Capital and applicant. The Parent Merger also is subject to approval by the shareholders of Sirrom Capital. The shareholders meeting to approve the Parent Merger is expected to take place on March 22, 1999. The proxy materials sent to the shareholders informed them, among other things, that applicant is seeking to deregister under the Act upon consummation of the Parent Merger. The Parent Merger is expected to be consummated on March 22, 1999.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the SEC, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the SEC shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(c)(1) of the Act provides that an issuer is not an investment company within the meaning of the Act if (a) its outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons, and (b) it is not making and does not presently propose to make a public offering of its securities.

3. Applicant states that, upon consummation of the Parent Merger, applicant will be an indirect wholly-owned subsidiary of FINOVA. Thus, applicant states that its outstanding securities will be beneficially owned by 1 person, FINOVA. FINOVA is not an investment company or a company relying on section 3(c)(1) or section 3(c)(7) of the Act. For purposes of determining the number of beneficial owners of applicant's securities under section 3(c)(1), applicant states that it will not be required to ''look through'' FINOVA to its shareholders. Applicant further states that it is not making and does not presently propose to make a public offering of its securities. Thus, applicant seeks to deregister under the Act and rely on section 3(c)(1) of the Act. Applicant requests that the order of deregistration be issued only after the Parent Merger is consummated as described in the application.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6004 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41135; File No. SR–AMEX–99–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the American Stock Exchange LLC Relating to Bond Indexed Securities

March 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 1999, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On February 16, 1999, the Exchange filed Amendment No. 1.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to approve for listing and trading under Section 107 of the Amex *Company Guide* seven bond indexed preferred or debt securities.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. *Purpose*

Under Section 107A of the Amex *Company Guide*, the Exchange may approve for listing and trading securities that cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures and warrants. The Amex now proposes to list for trading under Section 107A of the Company Guide seven different bond index linked term notes, each linked to a different bond index. Each issue of the proposed securities will meet the size and distribution requirements of Section 107A. The issuers of such securities also will be qualified under Section 107A.

Holders of the securities generally will receive interest on the face value of their securities in an amount to be determined at the time of issuance of the securities and disclosed to investors. The frequency and rate of the interest payment will vary from issue to issue based upon prevailing interest rates and other factors, such as a discount factor and interest payments made on the underlying bonds and credit spreads.[4]

In addition, investors will receive at maturity an amount based on the value

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 provided additional details regarding the securities, including the principal factors that will affect the rate of return on the securities and the formula for determining the value of the securities at settlement. *See* Letter from Scott G. Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated February 16, 1999.

[4] *See* Amendment No. 1. The discount factor may reflect prevailing interest rates, commissions and such other amounts as will be disclosed in the prospectus provided to investors.

of the linked bond index at maturity of the securities, which may be more or less than the original principal amount thereof. The securities will be valued at settlement based upon the following formula: principal amount × (ending index value/beginning index value) less a discount factor, which may reflect interest rates, commissions and other such amounts as will be disclosed in the prospectus provided to investors.[5] Returns to investors in the proposed securities are unleveraged with neither a cap nor a floor.

Bond index values for the purpose of determining the payment to holders at maturity will be determined by reference to prices for a linked index on a business day shortly prior to maturity. The securities will provide for maturity within a period of not less than one nor more than ten years from the date of issues.[6] The securities will not be callable or redeemable prior to maturity and will be cash settled in U.S. currency.[7] Holders of the securities will have no claim to the bonds included in the indices. The Exchange anticipates that the issuer will link distinct issues of such securities to the following seven bond indices sponsored and calculated by Merrill Lynch, Pierce, Fenner & Smith Incorporated (''MLPF&S''): the U.S. Domestic Master, Mortgage Master, U.S. Corporate/Government Master, U.S. Corporate Master, U.S. Treasury/Agency Master, U.S. Treasury Master and U.S. Agency Master Indices. The Mortgage Master, U.S. Corporate/Government Master, U.S. Corporate Master, U.S. Treasury/Agency Master, U.S. Treasury Master and U.S. Agency Master Indices are all subindices of the U.S. Domestic Master Index.

In structure, the proposed bond indexed debt securities are, in part, similar to previously approved commodity preferred securities[8] and stock index linked term notes,[9] however, the proposed linked indices comprise bond indices as opposed to commodity futures or equity securities indices. Accordingly, the Exchange proposes to provide for the listing and trading of the bond index linked term notes where the bonds included in each of the seven indices meet the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Amex *Company Guide*.[10]

Each index is rebalanced on the last calendar day of the month. For a bond to qualify for inclusion in an index, it must meet the pre-established and defined list of objective criteria. Bonds meeting the index's inclusion criteria on the last calendar day of the month are included in such index for the following month. Issues that no longer meet the criteria during the course of the month remain in the index until the next month-end rebalancing at which point they are dropped from the index. Bonds included in the indices are held constant throughout the month until the following monthly rebalancing. Bond eligibility criteria for each of the subindices is set forth below.

U.S. Domestic Master Index. The U.S. Domestic Master Index,[11] established in 1975, is MLPF&S's indicator of the performance of the investment grade U.S. domestic bond market. The index currently captures over $5 trillion of the outstanding debt of the U.S. Treasury Note and Bond, U.S. Agency, Mortgage Pass-through and U.S. Investment Grade Corporate Bond markets. Current bond criteria for the Domestic Master Index include all of the criteria set forth below for each of the subindices.

U.S. Treasury Master Index. As of December 31, 1998, the U.S. Treasury Master Index, established in 1977, was comprised of 163 issues with a market value equal to $2.32 trillion.[12] U.S. Treasury Notes and Bonds included in the U.S. Treasury Master Index have a remaining term to maturity equal to or greater than one year with at least $1 billion face value outstanding. U.S. Treasury STRIPS are not included in the index, however, the outstanding face value of the underlying notes and bonds from which these securities are created are not reduced by the amount stripped. The U.S. Treasury Master Index contains no inflation-indexed securities.

U.S. Agency Master Index. As of December 31, 1998, the U.S. Agency Master Index, established in 1977, contained 1,628 issues with a market value equal to $429 billion.[13] U.S. agency issues included in the U.S. Agency Master Index have a remaining term to final maturity equal to or greater than one year, including medium term notes, with at least $100 million face value outstanding. The issues are payable in U.S. Dollars. The index contains no inflation-indexed securities, structured notes or other forms of variable coupon securities. Securities must have a fixed coupon schedule. Step-up coupons are included in the index provided the coupon schedule is fixed at the time of issuance.

U.S. Corporate Master Index. As of December 31, 1998, the U.S. Corporate Master Index, established in 1972, was comprised of 4,670 issues with a market value equal to $1.16 trillion.[14] U.S. corporate issues included in the U.S. Corporate Master Index are limited to securities that are issued in the U.S. domestic markets, including yankees, global bonds and medium term notes, with remaining terms to maturity equal to or greater than one year and at least $100 million face value outstanding. The issuances are payable in U.S. Dollars. Securities must have a fixed coupon schedule. Step-up coupons are included in the index provided the coupon schedule is fixed at the time of issuance. Rule 144A securities issued with registration rights are included in the index only after they are exchanged for registered securities. Taxable securities issued by municipalities are included in the index. Issues included in the index must have a credit rating of investment grade (BBB3 or above) based on a composite of Moody's and S&P. The calculation of composite rating is based on an averaging that is biased to the lower of the two ratings. For example.

Baa3/BB+=BB1 composite rating
Baa2/BB+=BBB3 composite rating
Baa3/BB−=BB2 composite rating

If an issue is rated by only one of the services, the rating will equal that individual rating. Issues that are not rated by either Moody's or S&P are

[5] *See* Amendment No. 1.

[6] *Id.*

[7] *Id.*

[8] *See* Securities Exchange Act Release No. 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997), granting immediate effectiveness to an Exchange proposal to list and trade commodity preferred securities (ComPS).

[9] *See* Securities Exchange Act Release No. 38940 (August 15, 1997), 62 FR 44735 (August 22, 1997), approving an Exchange proposal to list and trade indexed term notes linked to the Major 11 International Index.

[10] The Exchange's Bond and Debenture Listing Standards provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and either: the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange); an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) has guaranteed the debt security; a nationally recognized statistical rating organization (an ''NRSRO'') has assigned a current rating to the debt security that is no lower than an S&P Corporation ''B'' rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned; (i) an investment grade rating to an immediately senior issue; or (ii) a rating that is no lower than an S&P Corporation ''B'' rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue. All of the underlying bonds in each of the proposed indices exceed these listing standards.

[11] As of December 31, 1998, the U.S. Domestic Master Index is comprised of 6,911 issues with a market value of $5.52 trillion—Bloomberg L.P.

[12] Data as of December 31, 1998—Bloomberg L.P.

[13] Data as of December 31, 1998—Bloomberg L.P.

[14] Data as of December 31, 1998—Bloomberg L.P.

excluded. Capital trust preferred securities are included in the index *Mortgage Master Index*.

As of December 31, 1998, the Mortgage Master-Index, established in 1975, comprised 450 issues with a market value equal to $1.60 trillion.[15] Mortgage-backed securities in the Mortgage Master Index include single-family 30-year, 15-year and balloon mortgages. GNMA II, mobile home and GPM mortgages are excluded in the index must have at least $600 million current face outstanding. Individual pools are aggregated into generic securities based on issuer, type (30-year, 15-year, etc.), coupon and production year. Asset-backed securities (other than MBS) are not included in this index or any of the Domestic Master sub-indices.

U.S. Corporate/Government Master Index. The U.S. Corporate/Government Master Index,[16] established in 1972, comprises a combination of the U.S. Corporate Master, U.S. Treasury Master and U.S. Agency Master Indices.

U.S. Treasury/Agency Master Index. The U.S. Treasury/Agency Index,[17] established in 1972, comprises a combination of the U.S. Treasury Master and U.S. Agency Master Indices.

Each of the above indices are calculated by Merrill Lynch Research's Portfolio Strategy Group based on the prices of the underlying bonds determined each business day. All securities in the indices are priced at approximately 3:00 p.m. New York time each business day. The vast majority of the prices of the underlying securities comprising the indices are determined by the Merrill Lynch desks. These prices are determined in accordance with all applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding valuation of security positions. In addition to using these prices in calculating the indices and valuing client portfolios, MLPF&S simultaneously distributes these prices electronically to hundreds of mutual fund customers who use these prices to determine the value of their positions in accordance with applicable regulations. When a security price is not available, the Portfolio Strategy Group will use a security price from a third party vendor that, in its best judgment, will provide the most accurate market price thereof. The resulting index values are disseminated to, and published by Bloomberg L.P. and Reuters at the end of each business day. MLPF&S, in its rule as calculation agent for the bond index linked term notes, will use the index values as published on Bloomberg L.P. In conjunction with the issuance of the bond index linked term notes, the Exchange intends to publish the index value associated with the previous day's close.

Bond weightings for each of the indices are based on a bond's total outstanding capitalization (total face value currently outstanding times price plus accrued interest). Returns and weighted average characteristics are published daily.

The Exchange will require members, member organizations and employees thereof recommending a transaction in the securities: (1) To determine that such transaction is suitable for the customer and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction. The Exchange will distribute a circular to its membership prior to trading such securities providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in such securities and highlighting the special risks and characteristics thereof.

The securities will be subject to the equity margin and trading rules of the Exchange except that, where the securities are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act, in general, and further the objectives of Section 6(b)(5),[18] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–99–03 and should be submitted by April 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6046 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

[15] Data as of December 31, 1998–Bloomberg L.P.

[16] As of December 31, 1998, the U.S. Corporate and Government Master Index contained 6,461 issues with a market value equal to $3.92 trillion—Bloomberg L.P.

[17] As of December 31, 1998, the U.S. Treasury/Agency Master Index contained 1,791 issues with a market value equal to $2.75 trillion—Bloomberg L.P.

[18] 15 U.S.C. 78f(b)(5).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41127; File No. SR–CBOE–98–41]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1 and 2 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Amend its Minor Rule Violation Plan With Respect to the Exercise of American-Style, Cash-Settled Index Options

March 2, 1999.

I. Introduction

On September 21, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Minor Rule Violation Plan with respect to the exercise of American-style, cash-settled index options. On December 3, 1998, and February 17, 1999, respectively, the Exchange submitted to the Commission Amendment Nos. 1[3] and 2[4] to the proposed rule change.

The proposed rule change was published for comment in the **Federal Register** on October 29, 1998.[5] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

CBOE proposes to amend its summary fine rule to add a schedule of fines for CBOE members who violate provisions of Exchange Rule 11.1 governing the exercise of American-style, cash-settled index options. Currently, CBOE trades one American-style, cash-settled index option, Standard & Poor's 100 Index option (''OEX''). The following violations would be subject to a summary fine: failing to submit an exercise advice; submitting an advice without subsequently exercising an option; submitting an exercise advice after the designated cut-off time; and submitting an exercise advice for an amount different than the amount exercised. Violations occurring on a single trade date will generally be treated as one occurrence.[6]

There are three reasons why the Exchange determined to propose the schedule of summary fines discussed below for the above violations. First, the Exchange believes most violations are inadvertent. Second, processing routine violations under the summary fine program would significantly decrease the administrative burden of regulatory and enforcement staff as well as that of the BCC.[7] Third, the membership of the Exchange would be more cognizant of the severity of penalties imposed and staff would be better able to process expeditiously routine violations under the summary fine program. The Exchange believes that the escalating schedule will deter members from considering fines for these violations as ''a cost of doing business.''

The summary fine schedule for Exchange Rule 11.1 violations, to be imposed as a rolling year look back period, would be as follows:

- *Violations No. 1 and 2*—Letter of Caution. However, if the violation involves 5 contracts or less and no unusual circumstances are noted, a Letter of Information will be issued. Letters of Information will not be counted for escalation purposes and a member cannot receive more than two Letters of Information during the rolling year look back period.
- *Violation 3*—Summary Fine of $1,000 plus $10 per contract*
- *Violation 4*—Summary Fine of $2,000 plus $10 per contract*
- *Violation 5*—Summary Fine of $4,000 plus $10 per contract*
- *Violation 6 and Subsequent*—Referral to the BCC.

* Fines in excess of $5,000 will be deferred to the BCC.[8]

Some violations of CBOE Rule 11.1 with respect to American-style, cash-settled index options will not be resolved by summary fine. For example, violations that occur following the dissemination of significant news will not be resolved by way of summary fine. Additionally, violations where mitigating or aggravating circumstances are evident and it appears that a summary fine is inappropriate will be forwarded to the BCC.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular with the requirements of Section 6(b) and (d) of the Act.[9] Specifically, the Commission believes the proposal is consistent with Sections 6(b)(1), (5), (6), and (7), 6(d)(1) and (3), and 19(d).[10]

Section 6(b)(5) requires, in part, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; these rules must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.[11] The Commission finds that CBOE's proposed summary fines are equitable, non

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Patricia L. Cerny, Director, Department of Market Regulation, CBOE, to Robert Long, Attorney, Division of Market Regulation (''Division''), Commission dated December 2, 1998 (''Amendment No. 1''). Amendment No. 1 added the summary fine schedule approved herein to CBOE Rule 17.50(c)(1).

[4] *See* letter from Timothy Thompson, Director, CBOE, to Robert Long, Attorney, Division, Commission, dated February 17, 1999 (''Amendment No. 2''). Pursuant to Amendment No. 2, the time stamping of an advice or exercise instruction memorandum prior to purchasing contracts will not constitute a violation of the summary fine schedule because the practice of pre-time stamping is no longer relevant as a result of recent changes to CBOE's rules.

[5] *See* Exchange Act Release No. 40572 (October 19, 1998), 63 FR 58081.

[6] For example, if on any given day an individual member submits an exercise advice late to the Exchange and on the same day subsequently exercises a larger number of contracts than noted on the advice, both of these rule infractions (late advice submission and contract discrepancy) would be treated under the summary fine program as one violation. On the other hand, if two different market maker nominees of the same member firm each separately submit late exercise advices, such independent actions would be treated as two separate rule violations, even though they occurred on the same day. Where a matter is referred to the Business Conduct Committee (''BCC'') for action, instead of being handled under the summary fine program, the BCC would not be precluded from handling similar fact patterns differently. Telephone conversation between Mary Bender, Senior Vice President, Regulation, CBOE, and Robert B. Long, Attorney, Division, Commission, on September 24, 1998.

[7] From January 1996 through May 1998, approximately 111 investigative reports were reviewed at the pre-BCC level and resulted in the issuance of Letters of Caution. A total of 15 Statement of Charges were authorized and/or settled by the BCC during the same time period. Five of these violations could have been resolved via the proposed summary fine program. The remaining violations either involved significant fines or the dissemination of news. Under the proposed program, investigative reports will not be prepared describing violative conduct and presented to the BCC and/or pre-BCC. Rather, upon receipt and review of all necessary documentation, the Letter of Caution or Summary Fine Disciplinary Notice will be immediately issued to the member.

[8] Any fine imposed in excess of $2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. *Compare* Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act).

[9] 15 U.S.C. 78f(b) and (d).

[10] 15 U.S.C. 78f(b)(1), (5), (6) and (7), 78f(d)(1) and (3), and 78s(d).

[11] 15 U.S.C. 78f(b)(5).

discriminatory, and protect investors and the public interest by implementing an efficient means to punish the violations of Exchange rules discussed above (*i.e.*, failing to submit an exercise advice; submitting an advice without subsequently exercising an option; submitting an exercise advice after the designated cut-off time; and submitting an exercise advice for an amount different than the amount exercised). By using the Exchange's summary fine program to punish these violations that the exchange represents are often inadvertent should allow the Exchange to allocate its resources to monitoring and punishing more serious and intentional offenses.

The Commission also believes that the proposal is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange.[12] In this regard, the proposal may provide an efficient procedure for the appropriate disciplining of members in those instances when a rule or policy violation is either minor or inadvertent.[13]

The Commission finds good cause for approving Amendments No. 1 and No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** CBOE's original proposal did not provide persons fined under the summary fine schedule with an opportunity to contest the exchange's determination. Amendment No. 1 ensures that alleged violators of the summary fine schedule are entitled to contest violations and request hearings, in accordance with CBOE Rule 1750(c)(1). In addition, the original proposal included time-stamping of an advice or exercise instruction memorandum prior to purchasing contracts in the list of minor rule violations. Amendment No. 2 removed this violation from the list of violations. The violation was removed because current CBOE rules require Exchange regulatory staff to time-stamp exercise advises upon depositing them into the exercise advice box. As a result, the practice of pre-time stamping is not relevant.

[12] 15 U.S.C. 78f(b)(6).

[13] The Commission notes that under the proposal, a member could potentially receive two letters of information and two letters of caution in a given year before receiving a fine for a violation. The Commission believes that such a scenario could undermine the deterrent effect of the summary fine program with respect to the violations discussed in the proposal. As a result, the Commission has advised the Exchange to monitor this potential problem.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and No. 2, including whether they are consistent with the Act. person making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change that are filed with the Commission, and all written communication relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–98–41 and should be submitted by April 1, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–CBOE–98–41), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6005 Filed 3–10–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41128; File No. SR–NASD–99–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Establishment of an Agency Quotation in Nasdaq

March 2, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 3, 1999, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') through its wholly owned subsidiary the Nasdaq Stock Market, Inc. (''Nasdaq'') filed with the Securities and exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule 4613. Character of Quotations.

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain two-sided quotations in The Nasdaq Stock Market, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) If a market maker updates the price of its bid or offer without any accompanying update to the size of such bid or offer, the size of the updated bid or offer shall be the size of the previous bid or offer.

(B) Notwithstanding any other provision in this paragraph (a), in order to display a limit order in compliance with SEC Rule 11Ac1–4, a registered market maker's displayed quotation size may be for one normal unit of trading or a larger multiple thereof.

(C) A registered market maker in a security listed on The Nasdaq Stock Market must display a quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation.

(D) A market maker registered as such in a Nasdaq National Market Security may also maintain a separate agency quotation for that security, pursuant to the requirements of subparagraph (b) of this rule (''Agency Quotation'').

(2)–(5) No Change.

(b) Agency Quotations

For each Nasdaq National Market Security in which a member is registered as a market maker, that member may display in The Nasdaq Stock Market an Agency Quote (separate from its proprietary quotation required by paragraph (a) of this rule), pursuant to the following requirements and conditions:

(1) the Agency Quotation may be used to display customer orders, but shall not be used to display the market maker's own proprietary interest or the proprietary interest of another member who is registered as a market maker in the security at issue; provided, however, that a market maker may display in the Agency Quote a proprietary interest that represents a portion of a customer order that the market maker contemporaneously has filled from inventory;

(2) the Agency Quote may be one sided, two sided, or in a closed-quote state, and shall not be subject to the procedures for excused withdrawal set forth in Rule 4619;

(3) Nasdaq shall assign a market maker identifier (''MMID'') to the Agency Quote that is distinct from the MMID for the market maker's proprietary quote.

(b) and (c)—Redesigned as (c) and (d) respectively

(d) Reasonably Competitive Quotations—Deleted.[3]

(e) Locked and Crossed Markets—No Change

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. the text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Nasdaq is proposing to allow market makers in Nasdaq National Market Securities (''NNM'') to display in Nasdaq a second quotation separate from their proprietary quotation for the purpose of displaying customer interest. This second quotation—the Agency Quote—would facilitate the display and execution of agency orders in NNM securities. Nasdaq states that the purpose of the Agency Quote is to give market makers more flexibility in determining how they wish to handle customer orders and other agency business. Instead of having to display a customer limit order in their proprietary quote or in a qualifying electronic communications network (''ECN''), market makers would also be able to display the order in their Agency Quote. Thus, Nasdaq believes that the proposal will allow market makers to regain control over their proprietary quotes that was lost with the introduction of the SEC's Order Handling Rules (''Order Handling Rules'' or ''OHR'').[4]

(a) *Proprietary Quotes and SEC Order Handling Rules.* Currently, a member registers as market maker in a particular stock by obtaining authorization from Nasdaq to display a proprietary quotation in the Nasdaq quote montage.[5] Such quotation is identified with a four character identifier unique to that market maker (''market maker identifier'' or ''MMID''), and is sequenced in price/time/size priority along with the quotes of other Nasdaq market participants (*i.e.*, market makers, ECNs, and UTP exchanges).

Nasdaq rules require that each registered market maker display during normal market hours (9:30 a.m. to 4:00 p.m.) a continuous and two-sided quotation with a designated price and size.[6] Once registered, market makers are obligated to continue to display two-sided quotes, unless the market maker withdraws (or is deemed to have withdrawn) from registration, subject to certain limited exceptions.[7]

According to Nasdaq, because of the nature of a dealer market, market makers historically have traded as principal rather than agent and market maker quotes historically have represented the market maker's willingness to buy or sell as principal a particular stock at a stated price and size. Nasdaq maintains that although market maker quotes are firm, and generally represented only the market maker's proprietary trading interest prior to 1997, market makers often were willing to trade well in excess of their quoted size.

In Janaury of 1997, however, the Commission implemented the Order Handling Rules, which incorporated into Nasdaq some principles of auction markets. Specifically, the SEC adopted Rule 11Ac1–4 (''Display Rule''),[8] which requires market makers to display customer limit orders that: (1) are priced better than a market maker's quote; or (2) add to the size of a market maker's quote when the market maker is at the best bid or best offer (''BBO'') in Nasdaq.[9] The SEC also adopted amendments to its Firm Quote Rule—Rule 11Ac1–1 under the Act[10]—which require a market maker to make publicly available any superior prices that it privately quotes through an ECN (''ECN Rule'') by either: (1) changing its quote to reflect the superior price in the ECN; or (2) delivering better-priced orders to an ECN that disseminates these priced orders to the public quotation system and provides broker-dealers equivalent access to these orders (''ECN Display Alternative'').

Nasdaq believes that the implementation of the OHR has effected the structure of the dealer market and the way in which many market makers transact business and process orders. Specifically, with the amendments to the Display Rule, customers have the ability to directly effect a market maker's quote and advertise their trading interest—along with the market maker's proprietary interest—in the market maker's quote. Market makers have expressed concern to Nasdaq that the implementation of the OHR have caused them (market makers) to ''lose control'' of their quotes because market makers must change their proprietary quote to reflect certain limit orders and must ''advertise competing interests in their quotes.'' Additionally, Nasdaq believes that the OHR frequently make

[3] *See* Exchange Act Release No. 39120 (Sept. 23, 1997), 62 FR 51170 (Sept. 30, 1997) (Order approving SR–NASD–97–70 eliminating the NASD's excess spread rule as of October 13, 1997).

[4] *See* Exchange Act Release No. 37619A (Sept. 6, 1996), 61 FR 48290 (Sept. 12, 1996).

[5] *See* NASD Rule 4611.

[6] *See* NASD Rule 4613(a).

[7] *See* NASD Rules 4619 and 4620. If a market maker does not qualify for an excused withdrawal under NASD Rule 4619, the withdrawal is deemed voluntary and the market maker is subject to a 20-day penalty before the market maker can re-register in the stock.

[8] 17 CFR 240.11Ac1–4.

[9] The requirements found in Rule 11Ac1–4 under the Act do not apply to any customer limit order that is: (1) executed upon receipt; (2) placed by a customer who expressly requests, either at the time that the order is placed or prior thereto pursuant to an individually negotiated agreement with respect to such customer's orders, that the order not be displayed; (3) an odd-lot order ; (4) a block size order, unless a customer placing such order requests that the order be displayed; (5) delivered immediately upon receipt to an exchange or association-sponsored system, or an ECN that complies with the requirements of Rule ''11Ac1–1(c)(5)(ii) under the Act with respect to that order; (6) delivered immediately upon receipt to another exchange member or OTC market maker that complies with the requirement of this section with respect to that order; or (7) an ''all or none'' order. *See* 17 CFR 240.11Ac1–4(c).

[10] *See* 17 CFR 240.11Ac1–1.

it difficult for market makers to ''work'' institutional or block-sized orders, which generally are accepted on a not-held basis and are for a negotiated net price. For example, a market maker may be piecing out part of an institutional/block-sized order in its quote (*e.g.*, the market maker is displaying a bid for 2,000 shares of a 20,000 share buy order) when it receives a 200 share order priced 1/16th better than the order being worked. Unless the market maker executes the smaller order or sends it to an ECN or another broker-dealer to be displayed, the market maker must display the 200 share customer limit order, which may impede the market maker's ability to execute the institutional order efficiently.

Nasdaq also believes that the inability of market makers to separate their retail and proprietary interest sometimes causes confusion to market participants. For example, if a market maker displays a 200 share limit order that improves its quote, an institutional customer may see the 200 share order in the quote and erroneously believe that the quote represents a price level at which the market maker wishes to trade proprietarily, for a greater size. Thus, institutions may erroneously conclude that the price of a displayed customer limit order represents the starting point for negotiating the net price the institution will receive or pay if it places a large order with the market maker.

Alternatively, a market maker may send a customer limit order to a qualifying ECN or other broker/dealer for handling. Nasdaq contends that in these situations, the market maker is, in effect, giving away business. Furthermore, transaction costs may increase because the ECN may impose a fee on the shipped limit order. In addition, the NASD's Manning Interpretation [11] requires the market maker to retrieve and execute the limit order that was sent to the ECN or other market maker it the market maker trades at the same or superior price to the limit order.[12] Nasdaq believes that retrieving the customer limit order this may be logistically and technologically difficult for the market maker. Thus, Nasdaq believes that the OHR have created regulatory and administrative difficulties for market makers under certain circumstances. Nasdaq notes that it has proposed to establish a limit order facility or ''book'' in Nasdaq to address some of the issues outlined above, but that such proposals have been unsuccessful in obtaining SEC approval and industry support.[13]

(b) *Agency Quote Proposal.* Nasdaq believes that the Agency Quote proposal is a logical solution to the problem of trying to represent both proprietary and agency interest in the same quotation. Nasdaq also believes that the Agency Quote proposal should satisfy the interest of some market participants who desire to have a limit order display capability (or book) in Nasdaq, while addressing concerns that Nasdaq should not operate a limit order book that competes with members.

Under this proposal, Nasdaq would provide market makers with the ability voluntarily display a separate and uniquely identified quotation in the Nasdaq quote montage for displaying customer orders in NNM securities. As proposed, market makers would be permitted to establish a second MMID for Agency Quotes in stocks in which the firm is a registered market maker in an NNM security.[14] Nasdaq initially is proposing to limit the Agency Quote capability to NNM securities so that it can develop experience with this type of facility and study the effects of the proposal on the market, before proposing to expand the concept to the a Nasdaq SmallCap Market.

The proposal would permit market makers to publish a one-sided as well as a two-sided Agency Quote, and would permit market makers to leave their Agency Quote inactive. Market makers could display in the Agency Quote their own customers' orders and the orders of other broker/dealers. Market makers could choose to reflect the order, in whole or in part, in the Agency Quote. (Of course, a market maker could continue to represent a customer limit order in its proprietary quote.) A market maker would not be permitted, however, to display in the Agency Quote its own proprietary interest or the proprietary interest of another broker/dealer that also is a registered market maker in the security at issue. The rule provides, however, an exception to this general prohibition, which would allow a market maker to display in the Agency Quote a proprietary interest that represents a portion of a customer order that the market maker has contemporaneously filled from its inventory. This exception would assist market makers in working large customer orders. Thus, a market maker would be able to stop a portion of an institutional order, fill the stopped portion from inventory, and display the stopped portion in its Agency Quote.[15] Accordingly, market makers could use the Agency Quote to work an institutional-sized order by displaying the entire order, or portions of the order, in the quote.

For example, a market maker working a 20,000 share order could display 1,000 shares at a time in its Agency Quote. As noted above, the market maker also could use the Agency Quote to offset orders that were contemporaneously (and previously) executed with a customer that were part of an institutional order. Thus, if a market maker received an order to buy 100,000 shares from a customer and the market maker immediately sold the customer 60,000 shares out of the market maker's inventory, the market maker could thereafter reflect the 60,000 shares in its Agency Quote (in full or incrementally) or cold reflect the full 100,000 shares in the Agency Quote (*i.e.*, 60,00 shares proprietary and 40,000 shares agency).

Under the proposed rule change, the Manning Interpretation will continue to apply to both the market maker's proprietary and Agency Quotes. Therefore, a market maker will still be prohibited from trading ahead of customer orders, whether the order was reflected in the market maker's proprietary quote or Agency Quote.[16] In

[11] Under the Manning Interpretation, a member violates NASD Rule 2110, which requires members to observe high standards of commercial honor and just and equitable principles of trade, if the member accepts and holds an unexecuted limit order from its customer (or a customer of another member) in a Nasdaq security and continues to trade the security for its own account at prices that would satisfy the customer's limit order, without executing that limit order. The interpretation further provides that a member firm may negotiate specific terms and conditions applicable to the acceptance of limit orders only with respect to limit orders that are: (a) for customer accounts that meet the definition of an ''institutional account'' as defined in Rule 3110(c)(4); or (b) 10,000 shares or more, unless such orders are less than $100,000.

[12] *See* NASD Rule 2110 and IM–2110–2; Interpretive Letter by Tom Gira, Associate General Counsel, dated July 3, 1997, regarding interaction between NASD Rule 2110/IM–2110–2 and Section 206(3) of the Investment Advisers Act of 1940 (available on www.nasdr.com).

[13] *See e.g.*, SR–NASD–95–42, Exchange Act Release No. 37302 (June 11, 1996), 61 FR 31574 (June 20, 1996) (Notice of SR–NASD–95–42 proposing to adopt the NAqcess system).

[14] If a market maker withdraws from a security on an unexcused basis, the firm is deemed to have been withdrawn from registration as a market maker and therefore will not be permitted to maintain an Agency Quote. *See* NASD Rules 4619 and 4620. Similarly, if a firm withdraws on an excused basis, the firm would be permitted to maintain an Agency Quote during the excused withdrawal period. *See id.*

[15] As noted *infra*, if a market maker executed its proprietary interest displayed in the Agency Quote, the market maker would still be obligated under the Manning Interpretation to protect any limit order covered by Manning that may have been transferred to another broker-dealer or ECN for execution.

[16] As is the case today, a market maker could trade at a price equal or superior to a customer limit order if the market maker had negotiated ''terms and conditions'' consistent with the exception in the Manning Interpretation. *See* note 11, *supra.*

addition, Agency Quotes will be available for auto-execution through SOES or its successor system.[17] Any execution effected through the automated facilities of Nasdaq against the Agency Quote would be reported by the Nasdaq system.[18] Nasdaq also will permit Agency Quotes to use a supplemental size (*i.e.*, reserve size) feature, so that a customer could have a portion of its order displayed in the quote, with the remainder of the order in reserve to be displayed in pieces after the displayed portion is executed.

This proposal would provide a facility for the display and the automatic execution of customer limit orders, and would also allow market makers to retain their limit order business. Thus, the proposal should satisfy the interest of some market participants who desire to have a limit order display capability in Nasdaq, and allay some concerns that Nasdaq should not operate a limit order book that competes with members. Because quotes will be more easily identifiable as either proprietary or agency, the proposal should also allow market participants to better identify the prices and sizes at which market makers wish to trade proprietarily. Thus, the proposal should facilitate the negotiation of trades between market makers and institutions, as well as other market participants.

(c) *Fees for Accessing Agency Quotations.* Currently, many ECNs charge fees to market participants (and ECN subscribers) that execute against a customer order that is displayed in the ECN. Although market makers currently may not charge a similar fee when their public quotes are accessed, market makers have expressed a desire to do so, in particular since they often are acting as agent by displaying a customer's interest in their quote. Some market makers argue that it is inequitable that ECNs are permitted to charge a fee when their quote is accessed, but market makers are prohibited from charging a fee in similar situations when they act as agent.[19] Nasdaq notes, however, that in the past it was impossible to readily determine whether a market maker's quote represented its customers' interest or its proprietary interest, and thus whether it was acting as principal or agent. The Agency Quote proposal, if adopted, should change the structure of the market so it will be clear that when the market maker's Agency Quote is accessed, it is acting as agent.[20] In light of the foregoing, Nasdaq plans to file a proposal shortly that would permit market makers to charge a fee when their Agency is accessed, similar to what ECNs currently may do.[21] Nasdaq anticipates that the Agency Quote Fee proposal will require market makers and ECNs to round their quotes if the market maker's Agency Quote access fee exceeds a ½ cent per share.[22]

(2) Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Sections 15A(b)(6),[23] 15A(b)(11),[24] and 11A of the Act.[25] Section 15A(b)(6)[26] requires that the rules of a registered national securities association are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; these rules must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11)[27] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C)[28] provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer.

Nasdaq believes that the proposal will provide another mechanism—and therefore make it easier—for market makers to display limit orders and to comply with their obligations under the Order Handling Rules. Thus, Nasdaq believes that the proposed rule change is consistent with Section 11A[29] and the SEC's Order Handling Rules,[30] and, in particular, the Display Rule.[31] Additionally, customer limit orders placed in the Agency Quote will be subject to auto-execution through SOES or Nasdaq's successor system. Thus, the proposal should assure the practicability of brokers executing investors' orders in the best market and assure an opportunity for investors' orders to be executed without the participation of a dealer. Additionally, by giving market makers the choice to display agency interest in a separate quote instead of sending the order to an ECN, transaction costs may be reduced.

Nasdaq believes that the proposal also will provide greater information to the market and will decrease confusion because market participants will be better able to determine whether a quote represents a market maker's agency or proprietary interest. Thus, the proposal should produce fair and informative quotations and assure the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities.

The proposal also will make it easier for investors and market participants to determine the price at which a market maker wishes to trade proprietary. Thus, the proposal may better facilitate the negotiation of trade prices between

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[17] Nasdaq has submitted a rule proposal to functionally integrate the SOES and SelectNet systems. *See* File No. SR–NASD–99–11.

[18] Under the NASD's riskless principal rule proposal currently on file with the SEC, the market maker would not be required to report the offsetting buy/sell to the customer so long as the two transactions (*e.g.*, the sale to the market maker and offsetting buy from the customer) were done contemporaneously at the same price. *See* Exchange Act Release No. 40382 (Aug. 28, 1998), 63 FR 47337 (Sept. 4, 1998) (notice for SR–NASD–98–59 relating to trade reporting).

[19] The Commission has interpreted the Firm Quote Rule to prohibit market maker fees for access to their public quotes. The Commission also believes that ECNs are not subject to the same obligations as market makers under SEC Rule 11Ac1–1(c)(5)(ii). *See* Letters from Robert L.D. Colby, Deputy Director, Division of Market Regulation (''Division''), Commission, to Joseph G. Messina, Vice President, M.H. Meyerson & Co., Inc., dated June 12, 1998 and Louis B. Todd, Jr., Partner—Head of Equity Trading, J.C. Bradford & Co., dated August 6, 1998.

[20] The Commission notes that as proposed, a market maker could display its proprietary interest in the Agency Quote if the maker had previously and contemporaneously executed a customer order. As proposed, this proprietary interest would not be identified as such in the Agency Quote.

[21] At this time, the Commission offers no opinion regarding the forthcoming Agency Quote Fee proposal's consistency with the Firm Quote Rule.

[22] Nasdaq believes the pending Agency Quote fee proposal should, among other things, increase price transparency and help to identify potential best execution issues. Telephone conversation between John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq and Marc McKayle, Attorney, Division, Commission, on March 1, 1999.

[23] 15 U.S.C. 78*o*–3(b)(6).

[24] 15 U.S.C. 78*o*–3(b)(11.

[25] 15 U.S.C. 78k–1.

[26] 15 U.S.C. 78*o*–3(b)(6).

[27] 15 U.S.C. 78*o*–3(b)(11.

[28] 15 U.S.C. 78k–1(a)(1)(C).

[29] U.S.C. 78k–1.

[30] *See* note 4, *supra.*

[31] *See* note 8, *supra.*

market makers, institutions, and other market participants. Accordingly, Nasdaq believes that the proposal will foster cooperation and coordination with persons engaged in facilitating securities transactions and will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–99–09 and should be submitted by April 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6044 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41130; File No. SR–NYSE–99–7]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to an Examination Fee for the Trading Assistant Qualification Examination

March 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 16, 1999, the New York Stock Exchange, Inc. (''NYSE'') filed with the Securities and Exchange Commission the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of the adoption of a $150 fee for candidates in connection with the new Trading Assistant Qualification Examination (''Series 25'') to be given by the NYSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed $150 fee for the new Series 25 examination is to offset the costs associated with development, implementation, administration and maintenance of that examination by the Exchange.

Exchange Rule 35 dictates the terms under which an employee of a member or member organization may be admitted to the Exchange Trading Floor. Recent amendments to Rule 35 require Trading Assistant, *i.e.*, Post Clerks and Booth Clerks, to be qualified by passing appropriate qualification examinations and by meeting appropriate training requirements.[3] The Exchange anticipates that administration of the Series 25 Examination will commence in March 1999.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(4) of the Act,[4] which permits the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among the members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[5] and subparagraph (f) of Rule 19b–4 thereunder because the proposal is establishing or changing a due, fee or other charge.[6] At any time within 60 days of the filing of such proposed rule

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[32] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40944 (January 13, 1999), 64 FR 3330 (January 21, 1999) (order approving File No. SR–NYSE–98–36).

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f).

change, the Commission may summarily abrogate such action if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room at 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SY–NYSE–99–07 and should be submitted by April 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6047 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41136; File No. SR–Phlx–00–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Changing the Required Minimum Value Size for an Opening Transaction in FLEX Equity Options

March 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 1999, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Exchange Rule 1079 to change the required minimum value size for an opening transaction in any FLEX equity option series which has no open interest to the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities. Below is the text of the proposed rule change. Deletions are in brackets; additions are italicized.

Rule 1079.

(a)(1)–(7) No change.

(8) Minimum size—

(A) Opening—If there is no open interest in the particular series when an RFQ[3] is submitted, the minimum size of an RFQ is:

(i) $10 million underlying equivalent value, respecting FLEX market index options, and $5 million underlying equivalent value respecting FLEX industry options; and

(ii) [250 contracts, respecting FLEX equity options;] *the lesser of 250 contracts or the number of contracts having $1 million of underlying equivalent value, with respect to FLEX equity options.*

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to change the minimum value size for opening transactions, other than FLEX Quotes responsive to a FLEX Request for Quotes, in any FLEX equity option series in which there is no open interest at the time the Request for Quotes is submitted. Currently, Exchange Rule 1079 states that the minimum value size for these opening transactions shall be 250 contracts. The Exchange is proposing to amend this rule to change the minimum value size for these transactions to the lesser of 250 contracts or the number of contracts overlying $1 million of the underlying securities.

The Exchange is proposing this change because it believes the current rule is unduly restrictive. The rule was originally put in place to limit participation in FLEX equity options to sophisticated, high net worth individuals.[4] The Exchange believes, however, that limiting participation in FLEX equity options based solely on the number of contracts purchased may diminish liquidity and trading interest in FLEX equity options on higher priced equities. The Exchange believes the value of the securities underlying the FLEX equity options is an equally valid restraint as the number of contracts and, if set at the appropriate limit, can also prevent the participation of investors who do not have adequate resources. In fact, the limitation on the minimum value size for opening transactions in FLEX market index options and FLEX industry index options is tied to the same type of standard, the underlying equivalent value.[5] The Exchange believes the number of contracts overlying $1 million in underlying securities is adequate to provide the requisite amount of investor protection. An opening transaction in a FLEX equity option series on a stock priced at $40.01 or more would reach this $1 million limit before it would reach the contract size limit, *i.e.*, 250 contracts times the multiplier (100) times the stock price ($40.01) totals $1,000,250 in underlying value.

Currently, an investor can purchase 250 contracts in a FLEX equity series on lower priced stocks, meeting the minimum requirement without reaching

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Rule 1079(a)(7) defines an RFQ as a Request-for-Quote.

[4] Securities Exchange Act Release No. 37691 (September 17, 1996), 61 FR 50060 (September 24, 1996) (adopting SR–Phlx–96–38).

[5] *See* Exchange Rule 1079(a)(8)(A)(i).

an underlying equivalent value of $1 million. For example, a purchase of FLEX equity options overlying a $10 stock is permitted although the underlying value for the options would be $250,000, *i.e.,* 250 contracts times the multiplier (100) times the stock price ($10). Conversely, under the proposed amendment, a participant could open a new FLEX equity option series overlying a $110 stock with a trade of 91 contracts or more since the underlying equivalent value would be $1,001,000.

2. *Statutory Basis*

The Exchange believes the proposed rule change is consistent with the objectives of Section 6(b) of the Act,[6] in general, and furthers the objectives of Section 6(b)(5),[7] in particular, in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78(b)(5).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx.

All submissions should refer to File No. SR–Phlx-99–02 and should be submitted by April 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–6045 Filed 3–10–99; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before April 12, 1999. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, S.W., 5th Floor, Washington, D.C. 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''HUBZone Empowerment Contracting Program Application.''

Form No: 2103.

Frequency: On Occasion.

Description of Respondents: SBA Businesses Seeking Certification as Qualified HUBZone Small Business Concern.

Annual Responses: 20,000.

Annual Burden: 20,000.

Dated: March 4, 1999.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 99–6010 Filed 3–10–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9B15]

State of Alabama (And Contiguous Counties in Tennessee and Georgia)

Jackson County and the contiguous counties of De Kalb, Madison, and Marshall in the State of Alabama; Franklin, Lincoln, and Marion Counties in Tennessee; and Dade County, Georgia constitute an economic injury disaster loan area as a result of a natural gas explosion that occurred on January 22, 1999 in the City of Bridgeport. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on December 1, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The economic injury number for Tennessee is 9B1600 and for Georgia the number is 9B1700.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: March 1, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–6009 Filed 3–10–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Economic Injury Disaster #9B23]

Commonwealth of Massachusetts (And a Contiguous County in the State of New Hampshire)

Middlesex County and the contiguous counties of Essex, Norfolk, Suffolk, and Worcester in the Commonwealth of Massachusetts, and Hillsborough County in the State of New Hampshire constitute an economic injury disaster loan area as a result of a fire that occurred on February 20, 1999 in the City of Waltham. Eligible small businesses and small agricultural cooperatives without credit available elsewhere may file applications for economic injury assistance as a result of this disaster until the close of business on December 1, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd, South 3rd Floor, Niagara Falls, NY 14303.

The interest rate for eligible small businesses and small agricultural cooperatives is 4 percent.

The numbers assigned for economic injury for this disaster are 9B2300 for Massachusetts and 9B2400 for New Hampshire.

(Catalog of Federal Domestic Assistance Program No. 59002.)

Dated: March 1, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–6008 Filed 3–10–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3161]

Texas (And Contiguous Parishes in Louisiana)

Newton County and the contiguous Counties of Jasper, Orange, and Sabine in the State of Texas, and Beauregard, Calcasieu, and Vernon Parishes in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms and flooding that occurred January 30 through February 10, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on May 3, 1999 and for economic injury until the close of business on Dec. 2, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 316106 for Texas and 316206 for Louisiana. For economic injury the numbers are 9B2600 for Texas and 9B2700 for Louisiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: March 2, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–6007 Filed 3–10–99; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

[Social Security Acquiescence Ruling 99–2 (8)]

Kerns v. Apfel; Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act

AGENCY: Social Security Administration.

ACTION: Notice of Social Security Acquiescence Ruling.

SUMMARY: In accordance with 20 CFR 402.35(b)(2), the Commissioner of Social Security gives notice of Social Security Acquiescence Ruling 99-2 (8).

EFFECTIVE DATE: March 11, 1999.

FOR FURTHER INFORMATION CONTACT: Wanda D. Mason, Litigation Staff, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966-5044.

SUPPLEMENTARY INFORMATION: Although not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Acquiescence Ruling in accordance with 20 CFR 402.35(b)(2).

A Social Security Acquiescence Ruling explains how we will apply a holding in a decision of a United States Court of Appeals that we determine conflicts with our interpretation of a provision of the Social Security Act (the Act) or regulations when the Government has decided not to seek further review of that decision or is unsuccessful on further review.

We will apply the holding of the Court of Appeals' decision as explained in this Social Security Acquiescence Ruling to claims at all levels of administrative adjudication within the Eighth Circuit. This Social Security Acquiescence Ruling will apply to all determinations or decisions made on or after March 11, 1999. If we made a determination or decision on your application for benefits between November 16, 1998, the date of the Court of Appeals' decision, and March 11, 1999, the effective date of this Social Security Acquiescence Ruling, you may request application of the Social Security Acquiescence Ruling to the prior determination or decision. You must demonstrate, pursuant to 20 CFR 404.985(b)(2) or 416.1485(b)(2), that application of the Ruling could change our prior determination or decision in your case.

Additionally, when we received this precedential Court of Appeals' decision and determined that a Social Security Acquiescence Ruling might be required, we began to identify those claims that were pending before us within the circuit and that might be subject to readjudication if an Acquiescence Ruling were subsequently issued. Because we determined that an Acquiescence Ruling is required and are publishing this Social Security Acquiescence Ruling, we will send a notice to those individuals whose claims we have identified which may be affected by this Social Security Acquiescence Ruling. The notice will provide information about the Acquiescence Ruling and the right to request readjudication under the Ruling. It is not necessary for an individual to receive a notice in order to request application of this Social Security Acquiescence Ruling to the prior determination or decision on his or her

claim as provided in 20 CFR 404.985(b)(2) or 416.1485(b)(2), discussed above.

If this Social Security Acquiescence Ruling is later rescinded as obsolete, we will publish a notice in the **Federal Register** to that effect as provided for in 20 CFR 404.985(e) or 416.1485(e). If we decide to relitigate the issue covered by this Social Security Acquiescence Ruling as provided for by 20 CFR 404.985(c) or 416.1485(c), we will publish a notice in the **Federal Register** stating thatwe will apply our interpretation of the Act or regulations involved and explaining why we have decided to relitigate the issue.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security - Disability Insurance; 96.002 Social Security - Retirement Insurance; 96.004 Social Security - Survivors Insurance; 96.005 - Special Benefits for Disabled Coal Miners; 96.006 - Supplemental Security Income.)

Dated: February 26, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Acquiescence Ruling 99-2 (8)

Kerns v. *Apfel,* 160 F.3d 464 (8th Cir. 1998)—Definition of Highly Marketable Skills for Individuals Close to Retirement Age—Titles II and XVI of the Social Security Act. [1]

Issue: Whether the Social Security Administration (SSA) is required to find that a claimant close to retirement age (60-64) and limited to sedentary or light work has ''highly marketable'' skills before determining that the claimant has transferable skills and, therefore, is not disabled.

Statute/Regulation/Ruling Citation: Sections 223(d)(2)(A) and 1614(a)(3)(B) of the Social Security Act (42 U.S.C. 423(d)(2)(A) and 1382c(a)(3)(B)); 20 CFR 404.1520(f)(1), 404.1563(d), 404.1566(c), 416.920(f)(1), 416.963(d), 416.966(c); 20 CFR Part 404, Subpart P, Appendix 2, sections 201.00(f) and 202.00(f); Social Security Ruling 82-41.

Circuit: Eighth (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, South Dakota).

Kerns v. *Apfel,* 160 F.3d 464 (8th Cir. 1998).

Applicability of Ruling: This Ruling applies to determinations or decisions at all administrative levels (i.e., initial, reconsideration, Administrative Law Judge (ALJ) hearing and Appeals Council).

Description of Case: In February 1994, the claimant, Danny C. Kerns, applied for disability insurance benefits claiming he became disabled because he suffered from Paget's disease of the right hip. Following the denial of his application for benefits at both the initial and reconsideration steps of the administrative review process, the claimant requested and received a hearing before an ALJ. Mr. Kerns, who was 61 years old at the time of the hearing, testified that he had a high school education plus two years of college and had worked as an embalmer and funeral director for the last 15 to 30 years. He testified that since 1985 he worked at a funeral home where he conducted funerals, lifted caskets, and handled accounts payable and accounts receivable. He also stated that his only formal bookkeeping training was from an accounting class he took in high school. Mr. Kerns alleged that the disease rendered him unable to work because it caused constant pain, interfered with sleep and his ability to concentrate, caused irritability, and prevented him from sitting or standing for long periods of time.

The evidence provided at the hearing also included the testimony of a vocational expert who testified that Mr. Kerns' skills in accounts receivable and accounts payable were transferable to a variety of sedentary accounting clerk positions. The vocational expert stated that Mr. Kerns' skills could be transferred to such positions without significant vocational adjustment because the work settings, tools and processes involved in accounting clerk positions would be similar to those of his former position.

The ALJ issued a decision finding that Mr. Kerns was not disabled and denied his claim for disability benefits. The ALJ found that, although Mr. Kerns was unable to return to his past relevant work as a funeral director, he possessed transferable skills and retained the residual functional capacity to perform sedentary work.

Mr. Kerns requested Appeals Council review of the ALJ's decision and the Appeals Council issued a decision finding that Mr. Kerns retained the residual functional capacity for sedentary work. In addressing the transferability of Mr. Kerns' skills, the Appeals Council rejected the need to determine whether Mr. Kerns' accounting skills were ''highly marketable,'' stating that Mr. Kerns' skills were transferable because ''no significant vocational adjustment would be required'' for Mr. Kerns to perform accounting clerk positions. After finding that the claimant's skills were transferable, the Appeals Council applied Rule 201.07 of 20 CFR Part 404, Subpart P, Appendix 2, Table No. 1, which directed a finding that Mr. Kerns was not disabled.

The claimant sought judicial review of SSA's decision in district court. The district court found substantial evidence on the record as a whole to support the finding by SSA that Mr. Kerns had the residual functional capacity to perform sedentary positions and affirmed SSA's denial of disability benefits. Mr. Kerns appealed to the Court of Appeals for the Eighth Circuit. On appeal, the claimant contended, among other things, that SSA was required under its regulations to determine whether his accounting skills were ''highly marketable'' before deciding that they were transferable and that he was not disabled.

Holding: The Eighth Circuit noted that Mr. Kerns had satisfied his burden of proving at step four of the five-step sequential analysis that his impairment prevented him from performing his past work as a funeral director, and the burden thus shifted to SSA at step five to show the existence of other work in the national economy that the claimant could perform, considering the claimant's residual functional capacity, age, education and work experience. The court observed that the way in which a claimant's age affects the determination at this step is set forth in 20 CFR 404.1563 of the regulations. The court stated that, as claimants become older, this regulation ''imposes a progressively more stringent burden'' on SSA before disability benefits can be denied.[2] Section 404.1563(d) states that if a claimant is of advanced age (55 and over), has a severe impairment, and cannot do medium work, such claimant may not be able to work unless he or she has skills that can be transferred to less demanding jobs which exist in significant numbers in the national economy. In addition, section 404.1563(d) states that ''[i]f you are close to retirement age (60-64) and have a severe impairment, we will not consider you able to adjust to sedentary or light work unless you have skills which are highly marketable.''

The court of appeals found that in determining that Mr. Kerns was not disabled, SSA considered the transferability of his accounting skills

[1] Although the court of appeals' decision in *Kerns* concerned the interpretation of certain provisions of the title II disability program regulations, the title XVI disability program regulations contain provisions identical to those at issue in *Kerns*. Therefore, this Ruling extends to both title II and title XVI disability claims.

[2] Section 404.1563 and the corresponding title XVI regulation, section 416.963, are entitled ''Your age as a vocational factor.'' Sections 404.1563(b)-(d) and 416.963(b)-(d) specify three age categories: ''Younger person'' (under age 50); ''Person approaching advanced age'' (age 50-54); and ''Person of advanced age'' (age 55 or over). The last category includes a subcategory—a person close to retirement age (age 60-64).

by applying the standard set forth in section 201.00(f) of 20 CFR Part 404, Subpart P, Appendix 2. That section provides:

> In order to find transferability of skills to skilled sedentary work for individuals who are of advanced age (55 and over), there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.

The court of appeals indicated that section 404.1563(d) of the regulations ''requires something more than a mere determination of transferability'' for a claimant close to retirement age. Although the court of appeals noted that section 223(d)(2)(A) of the Act and section 404.1566(c) of the regulations provide that disability is to be evaluated in terms of a claimant's ability to perform jobs rather than on his or her ability to obtain them, the court found that ''the regulations [section 404.1563(a)] also recognize the effect that age has on a person's ability to compete with other job applicants.'' Section 404.1563(a) states:

> *Age* refers to how old you are (your chronological age) and the extent to which your age affects your ability to adapt to a new work situation and to do work in competition with others.

The Eighth Circuit determined that the language of section 404.1563(d) places a higher burden on SSA to show that a claimant with a severe impairment who is close to retirement age (age 60-64) can perform other work that exists in the national economy. The court indicated that under the regulations, ''[s]uch claimants will not be considered 'able to adjust to sedentary or light work unless [they] have skills which are highly marketable.''' The court held that ''[i]n the absence of a finding that the skills of a claimant close to retirement age are highly marketable, those skills cannot be found transferable.''

Because Mr. Kerns was close to retirement age at the time of the ALJ hearing, the court of appeals concluded that SSA was required to find that Mr. Kerns' skills were ''highly marketable'' before it could find that Mr. Kerns had transferable skills and deny disability benefits. The Eighth Circuit thereupon reversed the judgment of the district court with instructions to remand the case to SSA to determine whether Mr. Kerns' skills were ''highly marketable.''

Statement as to How Kerns Differs From SSA's Interpretation of the Regulations

At step five of the sequential evaluation process, SSA considers a claimant's chronological age in conjunction with residual functional capacity, education and work experience to determine whether a claimant can do work other than past relevant work. SSA takes into account how age affects a claimant's ability to adapt to new work situations and do work in competition with others in the workplace.

To this end, SSA's regulations provide that in order to find that a claimant whose sustained work capability is limited to light work or less and who is close to retirement age (60-64) possesses skills that can be used in (transferred to) other work, ''there must be very little, if any, vocational adjustment required in terms of tools, work processes, work settings, or the industry.'' 20 CFR Part 404, Subpart P, Appendix 2, section 202.00(f). SSA's regulations provide the same rule for a claimant whose sustained work capability is limited to sedentary work and who is of advanced age (55 and over). 20 CFR Part 404, Subpart P, Appendix 2, section 201.00(f). If the claimant's skills are transferable to other work under this standard, SSA will consider such skills ''highly marketable'' under 20 CFR 404.1563(d) and 416.963(d). SSA's regulations do not require a specific, separate and distinct finding that a claimant's skills are ''highly marketable'' in reaching a conclusion that the claimant has transferable skills.

The Eighth Circuit interpreted 20 CFR 404.1563(d) to require SSA to make an additional finding regarding the marketability of a claimant's skills in order to determine whether the skills of a claimant close to retirement age are transferable to sedentary or light work. The court held that in the absence of a finding by SSA that the skills of such a claimant are ''highly marketable,'' SSA may not conclude that the claimant possesses transferable skills.

Explanation of How SSA Will Apply The Kerns Decision Within the Circuit

This Ruling applies only to cases in which the claimant resides in Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota or South Dakota at the time of the determination or decision at any level of administrative review, i.e., initial, reconsideration, ALJ hearing or Appeals Council review.

In the case of a claimant whose sustained work capability is limited to sedentary or light work as a result of a severe impairment, who is close to retirement age (age 60-64), and who has skills, an adjudicator will make a separate finding regarding the marketability of the claimant's skills when determining whether the claimant's skills are transferable to other work under the standard specified in section 201.00(f) or 202.00(f) of 20 CFR Part 404, Subpart P, Appendix 2. Unless the adjudicator finds that the claimant's skills are ''highly marketable,'' the adjudicator will conclude that the claimant's skills are not transferable to other work even if the standard for finding transferability of skills specified in section 201.00(f) or 202.00(f) is otherwise met. For purposes of this Ruling, an adjudicator will consider the claimant's skills to be ''highly marketable'' only if the skills are sufficiently specialized and coveted by employers as to make the claimant's age irrelevant in the hiring process and enable the claimant to obtain employment with little difficulty. In determining whether a claimant's skills meet this definition of ''highly marketable,'' an adjudicator will consider:

(1) whether the skills were acquired through specialized or extensive education, training or experience; and

(2) whether the skills give the claimant a competitive edge over other, younger, potential employees with whom the claimant would compete for jobs requiring those skills, giving consideration to the number of such jobs available and the number of individuals competing for such jobs.[3]

SSA intends to clarify the regulations at issue in this case, 20 CFR 404.1563 and 416.963, through the rule making process and may rescind this Ruling once such clarification is made.

[FR Doc. 99–5979 Filed 3–10–99; 8:45 am]

BILLING CODE 4190–29–F

[3] Although rejecting SSA's interpretation of ''highly marketable'' skills, the Eighth Circuit in *Kerns* did not set forth specific, alternative criteria for determining when a claimant's skills may be considered ''highly marketable.'' Therefore, in the absence of a statement by the Eighth Circuit of a specific definition, we have adopted, for purposes of this Ruling, the standard articulated in *Preslar* v. *Secretary of Health and Human Services*, 14 F.3d 1107 (6th Cir. 1994), for which we published Acquiescence Ruling 95-1(6), for determining when the skills of a claimant close to retirement age may be considered ''highly marketable.'' Although this standard was not specifically adopted or discussed by the court in *Kerns*, the court did cite portions of the *Preslar* decision in support of its holding in *Kerns*.

DEPARTMENT OF TRANSPORTATION

Coast Guard

Maritime Administration

[USCG 1998–3553]

Marine Transportation System: Waterways, Ports, and Their Intermodal Connections

AGENCY: Coast Guard, and Maritime Administration, DOT.

ACTION: Notice of availability; request for comments.

SUMMARY: The Coast Guard and the Maritime Administration, together with several other federal agencies, announce the availability of the Proceedings of the National Conference on the Marine Transportation System held in Warrenton, Virginia on November 17–19, 1998. Participants created a national vision for the system into the 21st century; discussed a framework for collaborative decision-making at the national and local levels; and examined safety, environmental, competitiveness, infrastructure, and security issues associated with the system. The conclusions and recommendations of the conference will be used to shape the direction and future of the Marine Transportation System. The conference proceedings are available for your review and comment.

DATES: Comments must be received by the Docket Management Facility by April 30, 1999.

ADDRESSES: You many mail comments to the Docket Management Facility, (USCG 1998–3553), U.S. Department of Transportation (DOT), room PL–401, Seventh Street SW., Washington, DC 20590–0001, or deliver them to room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

The Docket Management Facility maintains the public docket for this notice. The comments will become part of this docket and will be available for inspection or copying at room PL–401, located on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also electronically access the public docket for this notice on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: For information on the public docket, contact Dorothy Walker, Chief, Dockets, telephone 202–366–5145. For information concerning this notice contact Ms. Margie Hegy, U.S. Coast Guard (G–MWP), telephone 202–267–0415 or Ms. Patricia Randall, Maritime Administration (MAR–830), telephone 202–366–4125.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage interested persons to submit comments, written data, views, or other relevant documents. Persons submitting comments should include their names and addresses, identify this notice (USCG–1998–3553), and the reasons for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½x11 inches, suitable for copying and electronic filing to the DOT Docket Management Facility at the address under **ADDRESSES.** If you want acknowledgment of receipt of your comments, enclose a stamped, self-addressed post card or envelope.

A copy of the Proceedings is available for review in the docket and may be electronically accessed on the Internet at *http://dms.dot.gov*. To request a printed copy of the Proceedings, contact Ms. Short, telephone 202–267–6164 or Ms. Randall at the phone number under **FOR FURTHER INFORMATION CONTACT.**

Background

During the Spring of 1998, the Maritime Administration and the Coast Guard, together with the Federal Highway Administration, Federal Railroad Administration, Research and Special Programs Administration, Saint Lawrence Seaway Development Corporation, U.S. Army Corps of Engineers, National Oceanic and Atmospheric Administration, Minerals Management Service, National Imagery and Mapping Agency, U.S. Customs Service, and the Environmental Protection Agency, held seven two-day regional listening sessions to receive information concerning the current state and future needs of the U.S. marine transportation system—the waterways, ports, and their intermodal connections. The listening sessions were a first step in developing a customer-based strategy to work together to ensure that our waterways, ports and their intermodal connections meet user needs and public expectations for the 21st century.

The information from the seven regional listening sessions was presented at the November National Conference on the Marine Transportation System (MTS). The Secretary of Transportation hosted the conference attended by 144 senior public and private sector leaders. During the two and one-half day conference, participants created a national vision for the MTS into the 21st century; discussed a framework for collaborative decision-making at the national and local levels; and examined safety, environmental, competitiveness, infrastructure, and security issues associated with achieving the national vision. Participants reviewed current information and trends; and identified goals and recommended actions for resolving coordination, safety, environmental, competitiveness, infrastructure, and security issues.

The conclusions and recommendations of the conference will be used to shape the direction and future of the MTS. The conference proceedings are available for your review and comment. We request information from the general public and system users on the action items recommended and how to accomplish them. Identification of subissues, and relevant data or other information that will assist us in developing strategies and action plans is also requested. In addition, information on relevant MTS activities that are ongoing or planned within the public or private section is requested.

Next Steps

Comments received during the comment period will be considered by a congressionally mandated National Task Force to assess the adequacy of the marine transportation system. The Task Force will produce a report examining the critical marine transportation issues, and recommending strategies and plans of action to advance national interests, including economic competitiveness and national security in the marine transportation arena. The report will be submitted to Congress on July 1, 1999, and will be available to the public at that time.

Dated: March 4, 1999.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

Clyde J. Hart, Jr.,

Maritime Administrator.

[FR Doc. 99–6014 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Joint Special Committee 190/ Eurocae Working Group 52

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Joint Special Committee (SC)–190/EUROCAE Working Group (WG)–52 meeting to be held March 23–26, 1999, starting at 8:00 a.m. on Tuesday, March 23. The

meeting will be held at Boeing Long Beach Division, 3855 Lakewood Boulevard, Long Beach, CA 90846.

The agenda will include the following: Tuesday, March 23: 8:00–8:30 a.m. (1) Registration; 8:30 a.m.–12:00 noon (2) Plenary Session: a. Welcome; b. Administrative Issues; c. Editorial Team; d. Group Report-ins; 1:00–5:00 p.m. (3) Working Group Breakout Sessions. Wednesday, March 24: 8:30 a.m.–4:30 p.m. (4) Working Group Breakout Sessions; 4:30 p.m. (5) Papers delivered and provided to the Plenary. Thursday, March 25: 8:30 a.m.–5:00 p.m. (6) Working Group Breakout Sessions. Friday, March 26: 8:30 a.m.–12:00 noon (7) Plenary Session: a. Report-outs and Voting; b. Executive Report-out; c. Time and Place of Next Meeting; d. Administrative Issues; 12:00 noon (8) Adjourn.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 5, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–6053 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Washington County, Utah

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a study will be prepared for a new transportation corridor in Washington County, Utah. The new corridor will provide a new transportation facility to the east of I–15, from approximately milepost 1 on I–15 south of St. George, Utah to a connection with SR–9 near Hurricane, Utah.

FOR FURTHER INFORMATION CONTACT: Tom Allen, FHWA, Utah Division, 2520 West 4700 South, Suite 9–A, Salt Lake City, UT 84118, Telephone (801) 963–0182; or Ken Adair, Utah Department of Transportation (UDOT), 1345 South 350 West, Richfield, Utah 84701, Telephone (801) 896–9501 ×760.

SUPPLEMENTARY INFORMATION: FHWA, in cooperation with the Utah Department of Transportation, will prepare an Environmental Impact Statement for a new transportation corridor approximately 20 miles in length to the east of I–15, from approximately milepost 1 on I–15 south of St. George, Utah to a connection with SR–9 near Hurricane, Utah. The study is being initiated as an Environmental Impact Statement (EIS). If the scoping process does not identify potential for significant impacts, or identify controversy on environmental grounds, the study will be charged to an Environmental Assessment.

The study is intended to consider the need for additional capacity to serve transportation needs associated with expected regional growth in the project area, including several currently planned development projects. Existing travel-forecasting models will be updated and supplemented to forecast traffic patterns. The study will consider no-build, transportation system management, and build alternatives. The build alternative is expected to be a new 2–4 lane highway, with access control.

A project steering committee has been established to provide direction on the project. Additionally, a project advisory committee will be established to encourage early and on-going participation by interested parties. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed an interest in this proposal. A series of public meetings will be held, including a scoping meeting expected in April 1999. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The environmental document will be available for review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on February 17, 1999.

Michael G. Richie,

Division Administrator, Utah Division, Federal Highway Administration, Salt Lake City, Utah.

[FR Doc. 99–6041 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Contract DTRS–56–96–C–0010]

Quarterly Performance Review Meeting on The Contract ''Detection of Mechanical Damage in Pipelines''

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of meeting.

SUMMARY: RSPA invites the pipeline industry, in-line inspection (''smart pig'') vendors, and the general public to the next quarterly performance review meeting of progress on the contract ''Detection of Mechanical Damage in Pipelines.'' The meeting is open to anyone, and no registration is required. This contract is being performed by Battelle Memorial Institute (Battelle), along with the Southwest Research Institute, and Iowa State University. The contract is a research and development contract to develop electromagnetic in-line inspection technologies to detect and characterize mechanical damage and stress corrosion cracking. The meeting will cover a review of the overall project plan, the status of the contract tasks, progress made during the past quarter, and projected activity for the next quarter.

DATES: The next quarterly performance review meeting will be held on Monday, April 19, 1999 beginning at 1:00 p.m. and ending around 5:00 p.m.

ADDRESSES: The quarterly review meeting will be held at The Wyndham Anatole Hotel, 2201 Stemmons Freeway, Dallas TX 75207. The hotel's telephone number is (214) 748–1200.

FOR FURTHER INFORMATION CONTACT: Lloyd W. Ulrich, Contracting Officer's Technical Representative, Office of Pipeline Safety, telephone: (202) 366–4556, FAX: (202) 366–4566, e-mail: lloyd.ulrich@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

RSPA is conducting quarterly meetings on the status of its contract

''Detection of Mechanical Damage in Pipelines'' (Contract DTRS–56–96-C–0010) because in-line inspection research is of immediate interest to the pipeline industry and in-line inspection vendors. The research contract with Battelle is a cooperative effort between the Gas Research Institute (GRI) and DOT, with GRI providing technical guidance. The meetings allow disclosure of the results to interested parties and provide an opportunity for interested parties to ask Battelle questions concerning the research. Attendance at this meeting is open to all and does not require advanced registration nor advanced notification to RSPA.

We specifically want that segment of the pipeline industry involved with in-line inspection to be aware of the status of this contract. To assure that a cross section of industry is well represented at these meetings, we have invited the major domestic in-line inspection company (Tuboscope Vetco Pipeline Services) and the following pipeline industry trade associations: American Petroleum Institute, Interstate Natural Gas Association of America, and the American Gas Association. Each has named an engineering/technical representative and, along with the GRI representative providing technical guidance, form the Industry Review Team (IRT) for the contract.

The original objective was to open each quarterly performance review meeting to the public. The first quarterly meeting was conducted on October 22, 1996, in Washington, DC. However, preparing for a formal briefing each quarter takes a considerable amount of time and resources on Battelle's part that could be better used to conduct the research. Therefore, Battelle requested and RSPA concurred that future public meetings would be conducted semi-annually. Conducting public meetings semi-annually will provide all interested parties with sufficient update of progress in the research. Only the IRT and RSPA staff involved with the contract will be invited to the quarterly performance review meetings held between the public semi-annual meetings.

Another objective is to conduct each semi-annual meeting at the same location and either before or after a meeting of a pipeline industry technical meeting to enable participation by pipeline technical personnel involved with nondestructive evaluation. Previous semi-annual meetings have been held before or after GRI's Nondestructive Evaluation Technical Advisory Group. This meeting is being held in Dallas the afternoon before the 1999 API Pipeline Conference which starts on Tuesday, April 20, 1999 at the Wyndham Anatole Hotel. Each of the future semi-annual meetings will be announced in the **Federal Register** at least two weeks prior to the meeting.

II. The Contract

The Battelle contract is a research and development contract to evaluate and develop in-line inspection technologies for detecting mechanical damage and cracking, such as stress-corrosion cracking (SCC), in natural gas transmission and hazardous liquid pipelines. Third-party mechanical damage is one of the largest causes of pipeline failure, but existing in-line inspection tools cannot always detect or accurately characterize the severity of some types of third-party damage that can threaten pipeline integrity. Although SCC is not very common on pipelines, it usually appears in high-stressed, low-population-density areas and only when a limited set of environmental conditions are met. Several attempts have been made to develop an in-line inspection tool for SCC, but there is no commercially successful tool on the market.

Under the contract, Battelle is evaluating and advancing magnetic flux leakage (MFL) inspection technology for detecting mechanical damage and two electromagnetic technologies for detecting SCC. The focus is on MFL for mechanical damage because experience shows MFL can characterize some types of mechanical damage and can be successfully used for metal-loss corrosion under a wide variety of conditions. The focus for SCC is on electromagnetic technologies that can be used in conjunction with, or as a modification to, MFL tools. The technologies to be evaluated take advantage of the MFL magnetizer either by enhancing signals or using electrical currents that are generated by the passage of an inspection tool through a pipeline.

The contract includes three major tasks. Task 1 evaluated existing MFL signal generation and analysis methods and established a baseline from which today's tools can be evaluated and tomorrow's advances measured. Then, improvements to signal analysis methods were developed and verified through testing under realistic pipeline conditions. Finally, it built an experience base and defect sets to generalize the results from individual tools and analysis methods to the full range of practical applications.

Task 2 evaluated two inspection technologies for detecting stress corrosion cracks. The focus in Task 2 was on electromagnetic techniques that have been developed in recent years and that could be used on or as a modification to existing MFL tools. Three subtasks evaluated velocity-induced remote-field techniques, remote-field eddy-current techniques, and external techniques for sizing stress corrosion cracks.[1]

Task 3 is verifying the results from Tasks 1 and 2 by tests under realistic pipeline conditions. Task 3 is (1) extending the mechanical damage detection, signal decoupling, and sizing algorithms developed in the basic program to include the effects of pressure, (2) verifying the algorithms under pressurized conditions in GRI's 4,700 foot, 24-inch diameter Pipeline Simulation Facility (PSF) flow loop, and (3) developing techniques to measure stress and determine the severity of mechanical damage and cracks.

A drawback of present pig technology is the lack of a reliable pig performance verification procedure that is generally accepted by the pipeline industry and RSPA. The experience gained by the pipeline industry and RSPA with the use of the PSF flow loop in this project will provide a framework to develop procedures for evaluating pig performance. Defect detection reliability is critical if instrumented pigging is to be used as an in-line inspection tool in pipeline industry risk management programs.

The ultimate benefits of the project could be more efficient and cost-effective operations, maintenance programs to monitor and enhance the safety of gas transmission and hazardous liquid pipelines. Pipeline companies will benefit from having access to inspection technologies for detecting critical mechanical damage and stress-corrosion cracks. Inspection tool vendors will benefit by understanding where improvements are beneficial and needed. These benefits will support RSPA's long-range objective of ensuring the safety and reliability of the gas transmission and hazardous liquid pipeline infrastructure.

Issued in Washington, D. C. on March 8, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–6050 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–60–P

[1] The report summarizing the work conducted under tasks 1 and 2 can be found from viewing the RSPA home page, http://ops.dot.gov.

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Potential Failure Due to Brittle-Like Cracking Certain Polyethylene Plastic Pipe Manufactured by Century Utility Products Inc

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin on Century polyethylene gas pipe to owners and operators of natural gas distribution systems.

SUMMARY: This advisory bulletin is directed at owners and operators of natural gas distribution systems that have installed plastic pipe extruded by Century Utility Products Inc. from Union Carbide Corporation's DHDA 2077 Tan medium density polyethylene resin (Century pipe). Pipe manufactured between 1970 and 1973 may fail in service due to its poor resistance to brittle-like cracking. Operators with Century pipe in their systems should closely monitor this pipe for leaks with increased leak survey frequency. Century pipe that may be improperly installed, repaired, or operating in an environment that impairs pipe strength should be replaced.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gopala (Krishna) Vinjamuri at (202) 366–4503, or by E-mail at vinjamuri@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Transportation Safety Board (NTSB) recently published the results of a special investigation into accidents that involved plastic pipe currently in use to deliver natural gas to residential and business use. The report, Brittle-Like Cracking in Plastic Pipe for Gas Service (NTSB/SIR–98/01; April 23, 1998) suggested that ''[d]espite the general acceptance of plastic piping as a safe and economical alternative to piping made of steel and other materials, [a] number of pipeline accidents investigated have involved plastic piping that cracked in a brittle-like manner.'' Copies of this report may be obtained from NTSB Public Inquiry Office by calling 202–314–6551.

The phenomenon of brittle-like cracking in plastic pipe as described in the NTSB report and generally understood within the plastic pipeline industry relates to a part-through crack initiation in the pipe wall followed by stable crack growth at stress levels much lower than the stress required for yielding, resulting in a very tight slit-like opening and gas leak. This failure mode is difficult to detect until significant amount of gas leaks out of the pipe, and potentially migrates into closed space such as basements of dwellings. Premature brittle-like cracking requires relatively high localized stress intensification that may be a result from geometrical discontinuities, excessive bending, improper fitting assemblies, and/or dents and gouges. Because this failure mode exhibits no evidence of gross yielding at the failure location, the term brittle-like cracking is used. This phenomenon is different from brittle fracture, in which the failure results in fragmentation of the pipe.

NTSB also alleged that the guidance provided by manufacturers and industry standards for the installation of plastic pipe is inadequate for limiting stress intensification, particularly at plastic service connections to steel mains, many of these connections may have been installed without adequate protection from shear and bending forces that may result in brittle-like cracking.

Century Pipe

Between 1970 and 1973, Century Utility Products Inc. (a/k/a AMDEVCO), now defunct, marketed medium density polyethylene plastic pipe and fittings (Century pipe) in sizes ranging from ½ inch to 4 inches for use in natural gas distribution. These plastic pipes and fittings were manufactured by extrusion from Union Carbide Corporation's DHDA 2077 Tan resin, and was marked PE 2306 in accordance with American Society for Testing and Materials (ASTM) standards. Following investigation of a series of incidents, including the December 2, 1979, explosion in a residence in Tuscola, Illinois, and the October 17, 1994, accident in Waterloo, Iowa, that resulted in several fatalities, it was established that the Union Carbide's DHDA 2077 Tan resin lacks adequate resistance to brittle-like cracking and is prone to relatively short life when subjected to high local stress concentration. The pipe in the Tuscola, Illinois, accident failed in less than 8 years, and the pipe in the Waterloo, Iowa, accident failed within 23 years in service. It has been established that Century pipe exhibited significantly higher leak rate in comparison with other polyethylene, steel, and cast iron pipe used in natural gas distribution systems.

Following the Waterloo, Iowa, accident, RSPA has taken number of actions, including gathering Century pipe installation data. Also, remedial action has been taken by various operators in mid-western states where much of the Century pipe produced was known to have been installed. It is RSPA's understanding that the operators having Century pipe in their systems have initiated close monitoring and some have replacement program in progress.

NTSB recommended that RSPA notify owners and operators of natural gas systems who continue to use Century pipe of the potential for premature failures by brittle-like cracking and the need to ''[d]evelop a plan to closely monitor the performance of and to identify and replace, in a timely manner, any piping that indicates poor performance based on such evaluation factors as installation, operating and environmental conditions, piping failure characteristics and leak history.''

II. Advisory Bulletin (ADB–99–01)

To: Owners and Operators of Natural Gas Distribution Pipeline Systems.

Subject: Susceptibility of certain polyethylene pipe manufactured by Century Utility Products Inc. to premature failure due to brittle-like cracking.

Purpose: To advise natural gas distribution pipeline owners and operators of the need to closely monitor and replace as necessary polyethylene natural gas pipe manufactured by Century Utility Products Inc. between 1970 and 1973 that is susceptible to brittle-like cracking.

Advisory: All owners and operators of natural gas distribution systems who have installed and continue to use polyethylene pipe extruded by Century Utility Products Inc, (now defunct) from the resin DHDA 2077 Tan resin manufactured by Union Carbide Corporation during the period 1970 to 1973 (Century pipe) are advised that this pipe may be susceptible to premature failure due to brittle-like cracking. Premature failures by brittle-like cracking of Century pipe is known to occur due to poor resin characteristics, excessive local stress intensification caused by improper joints, improper installation, and environments detrimental to pipe long-term strength. All distribution systems containing Century pipe should be monitored to identify pipe subject to brittle-like cracking. Remedial action, including replacement, should be taken to protect system integrity and public safety.

In addition, in light of the potential susceptibility of Century pipe to brittle-like cracking, RSPA recommends that

each natural gas distribution system operator with Century pipe revise their plastic pipe repair procedure(s) to exclude pipe pinching for isolating sections of Century pipe. Additionally, RSPA recommends replacement of any Century pipe segment that has a significant leak history or which for any reason is of suspect integrity.

Authority: 49 U.S.C. Chapter 601; 49 CFR 1.53.

Issued in Washington, DC on March 5, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–6013 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Potential Failures Due to Brittle-Like Cracking of Older Plastic Pipe in Natural Gas Distribution Systems

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice; issuance of advisory bulletin on brittle-like failures of plastic pipe to owners and operators of natural gas distribution systems.

SUMMARY: RSPA is issuing this advisory bulletin to owners and operators of natural gas distribution systems to inform them of the potential vulnerability of older plastic gas distribution pipe to brittle-like cracking. The National Transportation Safety Board (NTSB) recently issued a Special Investigation Report (NTSB/SIR–98/01), *Brittle-like Cracking in Plastic Pipe for Gas Service*, that described how plastic pipe installed in natural gas distribution systems from the 1960s through the early 1980s may be vulnerable to brittle-like cracking resulting in gas leakage and potential hazards to the public and property. RSPA has also issued an additional advisory bulletin (ADB–99–01) reminding natural gas distribution system operators of the potential poor resistance to brittle-like cracking of certain polyethylene pipe manufactured by Century Utility Products, Inc.

ADDRESSES: This document can be viewed on the Office of Pipeline Safety (OPS) home page at: http://ops.dot.gov.

FOR FURTHER INFORMATION CONTACT: Gopala K. Vinjamuri, (202) 366–4503, or by email at gopala.vinjamuri@rspa.dot.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The National Transportation Safety Board (NTSB) recently issued a Special Investigation Report (NTSB/SIR–98/01), *Brittle-like Cracking in Plastic Pipe for Gas Service*, that described how plastic pipe installed in natural gas distribution systems from the 1960s through the early 1980s may be vulnerable to brittle-like cracking resulting in gas leakage and potential hazards to the public and property. An NTSB survey of the accident history of plastic pipe suggested that the material may be susceptible to premature brittle-like cracking under conditions of local stress intensification because of improper joining or installation procedures. Hundreds of thousands of miles of plastic pipe have been installed, with a significant amount installed prior to the mid-1980s. NTSB believes any vulnerability of this material to premature failure could represent a potentially serious hazard to public safety.

The NTSB report addressed the following safety issues:

- The vulnerability of plastic pipe to premature failures due to brittle-like cracking;
- The adequacy of available guidance relating to the installation and protection of plastic pipe connections to steel mains; and
- Performance monitoring of plastic pipeline systems as a way of detecting unacceptable performance in piping systems.

Copies of this report may be obtained by calling NTSB's Public Inquiry Office at 202–314–6551.

The phenomenon of brittle-like cracking in plastic pipe as described in the NTSB report and generally understood within the plastic pipeline industry relates to a part-through crack initiation in the pipe wall followed by stable crack growth at stress levels much lower than the stress required for yielding, resulting in a very tight slit-like opening and gas leak. Although significant cracking may occur at points of stress concentration and near improperly designed or installed fittings, small brittle-like cracks may be difficult to detect until a significant amount of gas leaks out of the pipe, and potentially migrates into an enclosed space such as a basement. Premature brittle-like cracking requires relatively high localized stress intensification that may be a result from geometrical discontinuities, excessive bending, improper fitting assemblies, and/or dents and gouges. Because this failure mode exhibits no evidence of gross yielding at the failure location, the term brittle-like cracking is used. This phenomenon is different from brittle fracture, in which the failure results in fragmentation of the pipe.

The report suggests that the combination of more durable plastic pipe materials and more realistic strength testing has improved the reliability of estimates of the long-term hydrostatic strength of modern plastic pipe and fittings. The report also documents that older polyethylene pipe, manufactured from the 1960s through the early 1980s, may fail at lower stresses and after less time than was originally projected. NTSB alleges that past standards used to rate the long-term strength of plastic pipe may have overrated the strength and resistance to brittle-like cracking of much of the plastic pipe manufactured and used for gas service from the 1960s through the early 1980s.

In 1998, NTSB made several recommendations to trade organizations and to the Research and Special Programs Administration (RSPA) on the need for a better understanding of the susceptibility of plastic pipe to brittle-like cracking. NTSB recommended that RSPA ''[d]etermine the extent of the susceptibility to premature brittle-like cracking of older plastic piping (beyond that marketed by Century Utilities Products Inc.) that remains in use for gas service nationwide.''

II. Advisory Bulletin (ADB–99–02)

To: Owners and Operators of and Natural Gas Distribution Pipeline Systems

Subject: Potential susceptibility of plastic pipe installed between the 1960 and the early 1980s to premature failure due to brittle-like cracking.

Purpose: To inform natural gas distribution pipeline operators of the need to determine the extent of susceptibility to brittle-like cracking of plastic pipe installed between the years 1960 and early 1980s.

Advisory: A review of Office of Pipeline Safety (OPS) reportable natural gas pipeline incidents and the findings of NTSB Special Investigation Report (NTSB/SIR–98/01) indicates that certain plastic pipe used in natural gas distribution service may be susceptible to brittle-like cracking. The standards used to rate the long-term strength of plastic pipe may have overrated the strength and resistance to brittle-like cracking of much of the plastic pipe manufactured and used for gas service from the 1960s through the early 1980s.

It is recommended that all owners and operators of natural gas distribution systems identify all pre-1982 plastic pipe installations, analyze leak

histories, and evaluate any conditions that may impose high stresses on the pipe. Appropriate remedial action, including replacement, should be taken to mitigate any risks to public safety.

Authority: 49 U.S.C. Chapter 601; 49 CFR 1.53.

Issued in Washington, D.C. on March 3, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–6051 Filed 3–10–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–437 (Sub–No. 1)]

Kansas Southwestern Railway, L.L.C.—Abandonment—In Sumner, Harper, Barber, Reno and Kingman Counties, KS

On February 19, 1999, the Kansas Southwestern Railway, L.L.C. (KSW) filed with the Surface Transportation Board (Board) an application to abandon: (1) a line of railroad known as the Hardtner Branch, extending from milepost 514, at Conway Springs, to milepost 571.85, at Kiowa; and (2) a portion of a line of railroad known as the Stafford Branch, extending from milepost 559.028, at Conway Springs, to milepost 610.0, at Olcott, at total distance of 108.8 miles, in Sumner, Harper, Barber, Reno, and Kingman Counties, KS. The line includes no stations and traverses U.S. Postal Service ZIP Codes 67031, 67106, 67118, 67014, 67622, 67068, 67121, 67004, 67049, 67003, 67061, and 67070.

The line does not contain federally granted rights-of-way. Any documentation in the KSW's possession will be made available promptly to those requesting it. The applicant's entire case for abandonment (case-in-chief) was filed with the application.

This line of railroad has appeared on the applicant's system diagram map or has been included in its narrative in category 1 since August 20, 1998.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

Any interested person may file with the Board written comments concerning the proposed abandonment or protests (including the protestant's entire opposition case) by April 5, 1999. All interested persons should be aware that, following any abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 U.S.C. 10905 (49 CFR 1152.28) or for a trail use condition under 16 U.S.C. 1247(d) (49 CFR 1152.29) must be filed by April 5, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27). Applicant's reply to any opposition statements and its response to trail use requests must be filed by April 20, 1999. *See* 49 CFR 1152.26(a).

Persons opposing the proposed abandonment that wish to participate actively and fully in the process should file a protest. Persons who may oppose the abandonment but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence should file comments. Persons seeking information concerning the filing of protests should refer to 49 CFR 1152.25. Persons interested only in seeking public use or trail use conditions should also file comments.

In addition, a commenting party or protestant may provide:

(i) An offer of financial assistance (OFA) for continued rail service under 49 U.S.C. 10904 (due 120 days after the application is filed or 10 days after the application is granted by the Board, whichever occurs sooner);

(ii) Recommended provisions for protection of the interests of employees;

(iii) A request for a public use condition under 49 U.S.C. 10905; and

(iv) A statement pertaining to prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. 1247(d) and 49 CFR 1152.29.

All filings in response to this notice must indicate the proceeding designation STB Docket No. AB–437 (Sub-No. 1) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W. Washington, DC 20423–0001; and (2) Karl Morell, Ball Janik LLP, Suite 225, 1455 F Street N.W., Washington, DC 20005. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the abandonment proceeding. 49 CFR 1104.12(a).

The lines sought to be abandoned will be available for subsidy or sale for continued rail use, if the Board decides to permit the abandonment in accordance with applicable laws and regulations (49 U.S.C. 10904 and 49 CFR 1152.27). Each OFA must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25). No subsidy arrangement approved under 49 U.S.C. 10904 shall remain in effect for more than 1 year unless otherwise mutually agreed by the parties (49 U.S.C. 10904(f)(4)(B)). Applicant will promptly provide upon request to each interested party an estimate of the subsidy and minimum purchase price required to keep the line in operation. The carrier's representative to whom inquiries may be made concerning sale or subsidy terms is set forth above.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in abandonment proceedings normally will be made available within 33 days of the filing of the application. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the Board's decision. A supplemental EA or EIS may be issued where appropriate.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: March 3, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–5786 Filed 3–10–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

Agency Information Collection Activities

March 4, 1999

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the

Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 12, 1999 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1477.

Regulation Project Number: EE–34–95 Final.

Type of Review: Extension.

Title: Notice of Significant Reduction in the Rate of Future Benefit Accrual.

Description: In order to protect the rights of participants in qualified pension plans, plan administrators must provide notice to plan participants and other parties, if the plan is amended in a particular manner. No government agency receives the information.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,000.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 15,000 hours.

OMB Number: 1545–1633.

Regulation Project Number: REG–209121–89 Final.

Type of Review: Extension.

Title: Certain Asset Transfers to a Tax-Exempt Entity.

Description: The written representation requested from a tax-exempt entity in regulations section 1.337(d)-4(b)(1)(A) concerns its plans to use assets received from a taxable corporation in a taxable unrelated trade or business. The taxable corporation is not taxable on gain if the assets are used in a taxable unrelated trade or business.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 5 hours.

Frequency of Response: Other (once).

Estimated Total Reporting Burden: 125 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–6042 Filed 3–10–99; 8:45 am]

BILLING CODE 4830–01–P

federal register

Thursday
March 11, 1999

Part II

Office of Personnel Management

Science and Technology Laboratory Personnel Management Demonstration Project: the Army Engineer Research and Development Center (ERDC); the Army Missile Research, Development, and Engineering Center (MRDEC); and the Army Aviation Research, Development, and Engineering Center (AVRDEC); Notice

OFFICE OF PERSONNEL MANAGEMENT

Science and Technology Laboratory Personnel Management Demonstration Project: the Army Engineer Research and Development Center (ERDC); the Army Missile Research, Development, and Engineering Center (MRDEC); and the Army Aviation Research, Development, and Engineering Center (AVRDEC)

AGENCY: Office of Personnel Management.

ACTION: Notice of amendment of three demonstration project plans and inclusion of competitive examining and Distinguished Scholastic Achievement Appointment authorities (See 5 CFR 470.315). Clarification of plans regarding OPM's approval of the plans' performance appraisal systems.

SUMMARY: 5 U.S.C. 4703 authorizes the Office of Personnel Management (OPM) to conduct demonstration projects that experiment with new and different personnel management concepts to determine whether such changes in personnel policy or procedures would result in improved Federal personnel management.

Public Law 103–337, October 5, 1994, permits the Department of Defense (DoD), with the approval of the OPM, to carry out personnel demonstration projects at DoD Science and Technology (S&T) Reinvention Laboratories. This notice identifies the competitive examining and Distinguished Scholastic Achievement Appointment authorities for three Army laboratories: ERDC, MRDEC, and AVRDEC. Additionally, this notice makes explicit the intent of the demonstration projects regarding OPM approval of the performance appraisal systems already contained in the project plans.

DATES: This amendment to the demonstration projects may be implemented at the Army laboratories beginning on the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT:

ERDC: Dr. C. H. Pennington, U.S. Army Engineer Waterways Experiment Station, ATTN: CEWES –ZT–E, 3909 Halls Ferry Road, Vicksburg, Mississippi 39180–6199, phone 601–634–3549.

MRDEC: Ms. Lana Hargrove, Acting Special Assistant for Laboratory Management, Missile Research, Development, and Engineering Center, U.S. Army Aviation and Missile Command, ATTN: AMSAM–RD, Redstone Arsenal, Alabama 35898–5000, phone 256–955–6734.

AVRDEC: Mr. Dave Knepper, Aviation Research, Development, and Engineering Center, U.S. Army Aviation and Missile Command, ATTN: AMSAM–AR–Z, Redstone Arsenal, Alabama 35898–5000, phone 256–313–4895.

OPM: Ms. Fidelma A. Donahue, U.S. Office of Personnel Management, 1900 E Street, N.W., Room 7460, Washington, D.C. 20415, phone 202–606–1138.

SUPPLEMENTARY INFORMATION:

1. Background

OPM approved and published final plans in the **Federal Register** for the following Science and Technology Reinvention Laboratory Personnel Management Demonstration Projects:

A. Waterways Experiment Station (WES) final publication on Tuesday, March 3, 1998, Volume 63, Number 41, Part IV.

WES correction and re-publication on Wednesday, March 25, 1998, Volume 63, Number 57, Part V.

Publication of WES expansion amendment to include Construction Engineering

Research Laboratory (CERL), Cold Regions Research and Engineering

Laboratory (CRREL), and Topographic Engineering Center (TEC) published on Friday, October 16, 1998, Volume 63, Number 200, Part V.

Note: The WES demonstration project was renamed the ERDC demonstration project following consolidation of the Army Corps of Engineers' laboratories.

B. MRDEC final publication on Friday, June 27, 1997, Volume 62, Number 124, Part IV.

C. AVRDEC final publication on Friday, June 27, 1997, Volume 62, Number 124, Part V.

The demonstration projects involved simplified job classification, pay banding, performance-based compensation systems, employee development provisions, and modified reduction-in-force procedures.

2. Overview

At the beginning of the projects, when asked what the laboratories would like to change in the existing personnel management system, managers at all three laboratories overwhelmingly said, ''Speed up the hiring process and allow us to hire the best people.'' The project development teams at each laboratory included such initiatives in earlier versions of the demonstration project plans. However, the initiatives were not included in any of the Army's **Federal Register** notices mentioned above. The Army laboratories require a process which will allow for the rapid filling of vacancies, is less labor intensive, and is responsive to their needs.

Dated: March 2, 1999.

Office of Personnel Management.

Janice R. Lachance,

Director.

I. Executive Summary

The Department of the Army established the personnel management demonstration projects to be generally similar to the system in use at the Navy personnel demonstration project known as China Lake. The projects and this amendment were built upon the concepts of linking performance to pay for all covered positions; simplifying paperwork in the processing of classification and other personnel actions; emphasizing partnerships among management, employees, and unions; and delegating other authorities to line managers.

II. Introduction

The demonstration projects at the three Army laboratories attempt to provide managers, at the lowest practical level, the authority and flexibility needed to achieve quality laboratories and quality products. The purpose of this amendment is to allow the Army laboratories to compete more effectively for high quality personnel and strengthen the manager's role in personnel management. Restructuring the examining process and providing an authority to appoint candidates meeting distinguished scholastic achievements will help meet the purpose of this amendment and the goals of the demonstration projects. Other basic provisions of the approved plans are unchanged.

III. Personnel System Changes

A. Competitive Examining Authority

1. Coverage

The Army laboratories propose to demonstrate a streamlined examining process for both permanent and non-permanent positions. This authority will apply to all positions covered by the respective demonstration projects with the exception of positions in the Senior Executive Service, Senior Level (ST/SL) positions, the Executive Assignment System or positions of Administrative Law Judge, and any examining process covered by court order. This authority will include the coordination of recruitment and public notices, the administration of the examining process, the administration of veterans' preference, the certification of candidates, and selection and

appointment consistent with merit principles.

2. Description of Examining Process

The primary change in the examining process to be demonstrated is the grouping of eligible candidates into three quality groups using numerical scores and the elimination of consideration according to the ''rule of three.''

For each candidate, minimum qualifications will be determined using OPM's operating manual, ''Qualification Standards Handbook for General Schedule Positions,'' including any selective placement factors identified for the position. Candidates who meet basic (minimum) qualifications will be further evaluated based on knowledge, skills, and abilities which are directly linked to the position(s) to be filled. Based on this assessment, candidates will receive a numerical score of 70, 80, or 90. No intermediate scores will be granted except for those eligibles who are entitled to veterans' preference. Preference eligibles meeting basic (minimum) qualifications will receive an additional 5 or 10 points (depending on their preference eligibility) which is added to the minimum scores identified above. Candidates will be placed in one of three quality groups based on their numerical score, including any veterans' preference points: Basically Qualified (score of 70 and above), Highly Qualified (score of 80 and above), or Superior (score of 90 and above). The names of preference eligibles shall be entered ahead of others having the same numerical rating.

For engineering/scientific and professional positions at the equivalent of GS–9 and above, candidates will be referred by quality groups in the order of the numerical ratings, including any veterans' preference points. For all other positions, i.e., other than engineering/scientific and professional positions at the equivalent of GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) eligibility will be listed at the top of the highest group certified.

In making their selections, selecting officials should be provided with a reasonable number of qualified candidates from which to choose. All candidates in the highest group will be certified. If there is an insufficient number of candidates in the highest group, candidates in the next lower group may then be certified. Should this process not yield a sufficient number, groups will be certified sequentially until a selection is made or the qualified pool is exhausted. When two or more groups are certified, candidates will be identified by quality group (i.e., Superior, Highly Qualified, Basically Qualified) in the order of their numerical scores. In making selections, to pass over any preference eligible(s) in order to select a nonpreference eligible requires approval under current pass-over or objection procedures.

B. Distinguished Scholastic Achievement Appointment

The Army laboratories further propose to establish a Distinguished Scholastic Achievement Appointment using an alternative examining process which provides the authority to appoint undergraduates and graduates through the doctoral level to professional positions at the equivalent of GS–7 through GS–11, and GS–12 positions.

At the undergraduate level, candidates may be appointed to positions at a pay level no greater than the equivalent of GS–7, step 10, provided that: they meet the minimum standards for the position as published in OPM's operating manual, ''Qualification Standards for General Schedule Positions,'' plus any selective factors stated in the vacancy announcement; the occupation has a positive education requirement; and the candidate has a cumulative grade point average of 3.5 or better (on a 4.0 scale) in those courses in those fields of study that are specified in the Qualifications Standards for the occupational series.

Appointments may also be made at the equivalent of GS–9 through GS–12 on the basis of graduate education and/or experience for those candidates with a grade point average of 3.5 or better (on a 4.0 scale) for graduate level courses in the field of study required for the occupation.

Veterans' preference procedures will apply when selecting candidates under this authority. Preference eligibles who meet the above criteria will be considered ahead of nonpreference eligibles. In making selections, to pass over any preference eligible(s) to select a nonpreference eligible requires approval under current pass-over or objection procedures. Priority must also be given to displaced employees as may be specified in OPM and DoD regulations.

Distinguished Scholastic Achievement Appointments will enable the Army laboratories to respond quickly to hiring needs with eminently qualified candidates possessing distinguished scholastic achievements.

IV. Required Waivers to Law and Regulations

Public Law 103–337 gave the DoD the authority to experiment with several personnel management innovations. In addition to the authorities granted by the law, the following are the waivers of law and regulation that will be necessary for amendment of the demonstration projects. Additional waivers in the area of performance management make explicit the intent of the demonstration projects regarding OPM approval of the performance appraisal systems already contained in the project plans.

A. Waivers to title 5, U.S. Code

Section 3317(a), Competitive Service; certification from registers (insofar as ''rule of three'' is eliminated under the demonstration projects).

Section 3318(a), Competitive Service; selection from certificates (insofar as ''rule of three'' is eliminated under the demonstration projects).

B. Waivers to Title 5, Code of Federal Regulations

Part 332.401 (b), Only to the extent that for non-professional or non-scientific positions equivalent to GS–9 and above, preference eligibles with a compensable service-connected disability of 10 percent or more who meet basic (minimum) qualification requirements will be entered at the top of the highest group certified without the need for further assessment.

Part 332.402, ''Rule of three'' will not be used in the demonstration projects.

Part 332.404, Order of selection is not limited to highest three eligibles.

Part 430.210, (For ERDC only; inasmuch as OPM approval of the final demonstration project plans enumerated in paragraph 1 of the ''Supplementary Information,'' above, also constitutes OPM approval of the performance appraisal systems contained in those plans.) Note that this waiver applies only to the ERDC plan; AVRDEC and MRDEC previously waived all of 5 CFR 430, Subpart B, which contains this provision.

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Part III

Department of Energy

48 CFR Parts 915 and 970

Acquisition Regulation; Department of Energy Management and Operating Contracts and Other Designated Contracts; Final Rule

DEPARTMENT OF ENERGY

48 CFR Parts 915 and 970

RIN 1991–AB32

Acquisition Regulation; Department of Energy Management and Operating Contracts and Other Designated Contracts

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: The Department today amends the Department of Energy Acquisition Regulation (DEAR) to revise its fee policies and related procedures for management and operating contracts and other designated contracts. The final rule implements a fee policy that ensures that fees: are reasonable and commensurate with performance, business and cost risks; create and implement tailored incentives for performance-based management contracts; are structured to attract best business partners; and afford flexibility to provide incentives to contractors to perform better at less cost.

DATES: This final rule is effective for new awards and extensions after April 12, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Michelsen, Office of Contract and Resource Management (MA–53), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1368; (202) 586–9356 (facsimile); stephen.michelsen@hq.doe.gov (Internet).

SUPPLEMENTARY INFORMATION:

I. Background

On April 10, 1998, the Department of Energy (DOE or Department) published in the **Federal Register** (63 FR 17800) a Notice of Proposed Rulemaking to amend the DEAR Subsection 970.15404–4 to revise fee policies and related procedures for management and operating contracts and other designated contracts. The Notice of Proposed Rulemaking continued the effort introduced in the Department's June 27, 1997 (62 FR 34842) rule to improve its management and operating contracts. Today's final rule amends DOE's fee policy to conform that policy to performance-based contracting concepts introduced in the earlier rule.

The Notice of Proposed Rulemaking solicited comments on all aspects of the proposed rulemaking, including the following five specific elements:

- The use of multiple contract types within the structure of a cost-plus-award-fee contract;
- The approach which places all fee at performance risk;
- The fee policy as it applies to contracts with nonprofit organizations including educational institutions, with an alternate proposal;
- The amount of fee necessary to attract the most capable contractors; and
- The application of the Conditional Payment of Fee, Profit or Incentives clause.

Because there were issues involved in the rulemaking that were significant and complex, a public workshop was conducted on May 19, 1998. This format allowed for the interactive exchange of ideas in an informal conference style setting. The workshop agenda included Department presentations on performance-based contract management, an executive summary of the proposed rule, and draft answers to questions that had been submitted by members of the public prior to the workshop. Four attendees made presentations. Written comments on the Notice of Proposed Rulemaking were due June 9, 1998. The Department received comments from 26 entities. The administrative record, including the transcript of the workshop is located in the Department's Freedom of Information Public Reading Room and on the Department's home page at http://www.pr.doe.gov.

Today's final rule adopts the Notice of Proposed Rulemaking with certain changes discussed in the Disposition of Comments section. The final rule reflects changes to existing regulations announced in the Notice of Proposed Rulemaking which include:

- Updated fee schedules based on the effects of inflation since 1991 (Subsections 915.404–4–71–5 and 970.15404–4–5);
- A new fee schedule for environmental management to support the environmental remediation work effort (Subsection 970.15404–4–5);
- Guidance on the availability of various contract types and a preference, when incentive contracting is utilized, for contract types under which all fee will be based on performance (Subsection 970.15404–4–3);
- A preference for those contract types that appropriately maximize the incentives for superior performance (Subsection 970.15404–4–3);
- Criteria for the use of multiple fee approaches (Subsection 970.15404–4–3);
- A correlation of incentive-fee type arrangements to Federal Acquisition Regulation (FAR) guidance (Subsection 970.15404–4–3);
- A requirement to make the maximum appropriate use of outcome oriented performance expectations consistent with performance-based management contract concepts (Subsection 970.15404–4–3);
- Restructuring of considerations and techniques for determining fixed fees and total available fee (Subsections 970.15404–4–4 and 970.15404–4–8);
- A redefinition of Facility/Task Categories consistent with changes in work at major facilities (Subsection 970.15404–4–8);
- An elimination of the references to fees for management and operating contracts for support services;
- A rewritten and retitled total available fee clause (Section 970.5204–54);
- A new clause that seeks to ensure, among other things, that performance affecting the critical areas of environment, safety and health, catastrophic events, specified level of performance, and cost performance is not compromised by any other performance objective (Subsection 970.5204–86);
- A new clause to address cost reduction proposal programs based on guidance in DEAR 970.15404–4–3(f) and 970.15404–4–11 (Subsection 970.5204–87); and,
- A new provision for identifying maximum available fee (Subsection 970.5204–88).

The final rule also reflects modifications to the Notice of Proposed Rulemaking in response to comments in the following areas:

- Added criteria for using negative fee incentives (Subsection 970.15404–4–1);
- A fee policy for laboratory management and operation, including Federally Funded Research and Development Centers (FFRDCs), (Subsection 970.15404–4–2);
- Limitation on using a fee schedule more than once in the determination of the fee amount for an annual period (Subsection 970.15404–4–6);
- The exclusion of at least 20% of the estimated cost or price of subcontracts

from the fee base (Subsection 970.15404–4–6);

• Description of fee schedule work efforts in the area of construction directly supporting effort in the various Facility/Task Categories (Subsection 970.1504–4–8);

• The right of the Contracting Officer and DOE Operation/Field Office Manager to make unilateral determinations (Subsections 970.5204–54, 970.5204–86, and 970.5204–87); and

• Revision of the proposed Conditional Payment of Fee, Profit, or Incentives clause which establishes the portion of total available fee, profit or incentives that is subject to recovery due to failure to meet minimum requirements for specified level of performance or cost performance while ensuring proper emphasis on environment, safety and health, and catastrophic events, including contracts with fixed fees (Subsection 970.5204–86).

II. Disposition of Comments

The Department has considered and evaluated the comments received during the public comment period. The following discussion provides a summary of the comments received, the Department's responses to the comments, and any resulting changes from the Notice of Proposed Rulemaking. This discussion is grouped by the major items covered. Text changes finalized by the rule are listed at the end of each major item discussed.

Item 1—Special Considerations: Nonprofit Organizations

Comment: The majority of the commenters opposed the Notice of Proposed Rulemaking at DEAR 970.15404–4–2, which would have placed limitations on the availability of fee for nonprofit organizations and educational institutions. Specifically, commenters expressed concerns that the proposed rulemaking did not reflect the diversity of interests of the contractors involved in managing laboratory operations. Commenters stated there were fundamental differences in structure and objectives between the diverse set of FFRDC contractors currently in operation in the DOE complex. The operators of FFRDCs represent a diverse set of organizations—educational institutions, educational consortiums, private institutions, technology companies, and combinations thereof.

Commenters suggested the total circumstances particular to the FFRDC and the selected operating organization should be considered when establishing compensation. Commenters stated that the Notice of Proposed Rulemaking was predicated on invalid assumptions regarding contractor performance incentives to satisfy the needs of the laboratories. Rather than extend the Department's commercial fee policy with its focus on incentives tied to financial and performance considerations, commenters suggested that some form of the alternate proposal be adopted, but with an emphasis on non-financial incentives. Commenters suggested that the Department adopt a policy more in line with the alternative policy proposed in the Notice of Proposed Rulemaking that focused on FFRDCs.

Further, many of the educational institutions that submitted comments sought to lessen the impact of Contract Reform liability provisions (62 FR 34842).

Expressing concern that the alternative policy might not be prepared on time for the publication of the final rule, several commenters suggested that the publication of DEAR 970.15404–4–2 be delayed.

While the majority of the commenters opposed the Notice of Proposed Rulemaking for the reasons described above, several commenters offered more general criticism that applied to both the proposed regulatory text and the alternate policy. Some commenters pointed out that the proposed regulatory text of DEAR 970.15404–4–2 did not provide adequate total available fee to attract the best business partners. Finally, a number of commenters questioned the Department's use of a definition of ''nonprofit'' that was inconsistent with the definition contained in the Internal Revenue Code.

Response: In preparing the Notice of Proposed Rulemaking, DOE recognized that there was no clear choice of a single policy which would allow the Department the flexibility to appropriately incentivize the performance of all of its laboratory contractors. Accordingly, while the Notice of Proposed Rulemaking proposed a fee policy at DEAR 970.15404–4–2 for contracts with nonprofit organizations including educational institutions, it also requested interested parties to comment on an alternative to the proposed rulemaking that would establish a fee policy for the operators of the Department's FFRDCs which would not distinguish between the types of business organizations operating them. The final rule at DEAR 970.15404–4–2 has retained those provisions of the Notice of Proposed Rulemaking at DEAR 970.15404–4–2 that have not generally been in dispute. The final rule retains the Contracting Officer's authority to consider whether fee is an appropriate incentive in each FFRDC circumstance at DEAR 970.15404–4–2(a). The Department recognizes that eliminating this commonly understood and accepted procedure would complicate rather than simplify the procurement process applied to FFRDCs. DOE agrees with the comments that the Notice of Proposed Rulemaking did not recognize the diversity of interests of the contractor operators of DOE laboratories.

Again, the alternative proposed a policy that more adequately considered the diversity of contractor interests. Accordingly, the Department has adopted in the final rule the guiding principles contained in the alternate policy—a policy which applies to the contractors operating the Department's laboratories without specifically distinguishing between types of business organizations. To that end, the final rule, among other things, does not specifically define ''nonprofit organizations.'' The final rule DEAR 970.15404–4–2 language provides a substantial degree of flexibility to Contracting Officers—including discretionary authority for the creation of performance incentives suited for local FFRDC operations. Nevertheless, because the purpose of the rulemaking is to implement the policy of linking the payment of fee to risk and performance, the final rule retains this requirement in DEAR 970.15404–4–2. As a result, the Contracting Officer under DEAR 970.15404–4–2 now has authority to consider whether fee is needed, and if so, how much is required, and the fee structure to incentivize optimal contractor performance.

One of the primary rationales expressed in the alternate DEAR 970.15404–4–2 in the Notice of Proposed Rulemaking for the change in fee policy was to establish uniformity and consistency in the payment of fees to FFRDC operators. Prior to this rulemaking, the Department's practices differed significantly from other agencies' contracting with similar organizations. The adoption of DEAR 970.15404–4–2 as contained in this final rule will bring the Department closer into conformance with other similarly situated Government agencies. In writing the final rule to apply to the management of the Department's laboratories, the considerations and requirements were revised at DEAR 970.15404–4–2 to reflect FAR Part 35 policy regarding FFRDCs and be more in line with other agency policies as requested by several commenters.

The Contract Reform rule (62 FR 34842) imposed increased liability on contractors in several areas including statutorily based unallowable costs and costs due to failure to exercise prudent business judgment on the part of the contractor's managerial personnel. In this final rule, DOE is conforming its fee policy to the principles established by Contract Reform. The Department's decision is based on consideration of a number of internal and external factors, including parity with liabilities imposed on ''commercial'' contractors, accountability for taxpayer dollars, congressional interest and oversight, and the broad objectives of Contract Reform. Nevertheless, the Department recognized that the Notice of Proposed Rulemaking, in both the policy and the alternate, may not provide sufficient fee to compensate for the operator's assumption of both liability and performance risks that Contract Reform had shifted to the FFRDC operators. As a result, the final rule adds DEAR 970.15404–4–2(c)(4) to allow for the establishment of fee for the life of the contract for operation of laboratories. To provide educational or nonprofit organizations adequate compensation for the liability they assume under their contracts and the risk posed by having all or the majority of fee tied to performance, the final rule also: allows the provision of fee to educational institutions; allows for a performance fee which is higher than the fixed fee amount; and minimizes risk by making fee subject to downward adjustment only if performance is less than the target performance level stated in the contract. Further, the policy allows the establishment of a fixed fee or base fee in an amount reflective of the cost associated with the risk of the liabilities assumed.

To the extent that a delay in implementation was requested, it is not believed that any such delay would result in any further improvements to DEAR 970.15404–4–2.

In summary, the final rule at DEAR 970.15404–4–2 addresses special considerations for laboratory management and operation without distinguishing between the types of organizations operating the facilities; provides a substantial degree of flexibility to Contracting Officers; brings the Department closer into conformance with other similarly situated Government agencies; and allows for the establishment of fee for the life of the contract for the operation of laboratories.

Item 2—Calculating Fixed Fee

A. Comment: Three commenters recommended that the Department conduct its negotiations and structure types of contracts more in accordance with FAR. These comments included a proposal to negotiate fees, to use FAR type cost-plus-incentive-fee or cost-plus-award-fee contracts, and to use a weighted guideline approach. One commenter recommended that fee not be artificially limited by fee schedules and that fee schedules be utilized only as a guide for estimating fee targets for negotiation. Six commenters recommended various alternative indexes which would factor in more labor costs or a broader index for inflation to represent the actual types of costs incurred by the Department's contractors. The commenters also asserted that the modifications to the fee schedules in the Notice of Proposed Rulemaking were inadequate to account for inflation, the additional risks from the added liabilities from Contract Reform, and the performance risk environment.

Response: The nature of the management and operating contract does not lend itself to the application of the weighted guidelines approach. Therefore, the Department continues to use fee schedules associated with various categories of work as the foundation for determining fees. The schedules are regressive in nature, reflecting the general principle applied to government contracting which provides lower fee ranges for categories of cost which indicate less risk, complexity and technical value; and higher fee ranges for categories of cost which indicate greater risk, complexity and technical value (e.g., low fee range for manufacturing labor, high fee range for engineering labor). To better reflect the changing focus of the work being performed by the Department, an additional schedule was added in the Notice of Proposed Rulemaking to address environmental management work.

As proposed in the Notice of Proposed Rulemaking and adopted in the final rule, the revised fee policy provides for the use of alternatives to the traditional management and operating cost and fee arrangements. However, the use of such alternatives is conditioned at DEAR 970.15404–4–3 on obtaining and negotiating the costs for the alternative used and complying with the conditions of DEAR Part 915 and FAR Parts 15 and 16. In establishing fees under these alternative arrangements, a structured approach as set forth in FAR Part 15 and DEAR Part 915 will be used.

As proposed, all of the fee schedules were adjusted based on inflation which occurred from 1991 through 1997. This resulted in an adjustment of 9.4% for the schedules in the Notice of Proposed Rulemaking. Some commenters criticized this adjustment as not truly representative of the actual inflation of costs incurred at the Department's sites. In response to these comments, DOE conducted a review of various indexes. After consideration of that review, the complexities of index selection, and the applicability of the indexes to the Department's specialized work, DOE determined to make no further adjustments to the schedules proposed in the Notice of Proposed Rulemaking. Nevertheless, in developing periodic inflation adjustments in the future, DOE will consider other indexes as alternatives for use if deemed better indicators of the DOE inflation experience.

B. Comment: Four commenters requested a definition for each of the fee schedule work efforts at DEAR 970.15404–4–5 in order to reduce the subjectivity of categorizing work scope as production, research and development, or environmental management. They requested clarification of classifying primary mission work versus performing contract efforts (particularly environmental management) for the various fee schedules. Commenters also requested a clarification of the application of multiple fee schedules for multi-program facilities.

Response: The Notice of Proposed Rulemaking and final rule at DEAR 970.15404–4–5 allow for the work at a site to be broken into various categories and the cost of such work allocated to an appropriate fee schedule for the purposes of determining fee. There is latitude provided to Contracting Officers in determining the appropriate schedule against which to allocate the cost of various work categories. For example, the Environmental Management schedule is designed to include the grouping of various types of work related to environmental management, including waste management, environmental remediation, incidental construction, and incidental technology development/demonstration. However, the Environmental Management schedule does not contemplate inclusion of significant work which would more properly be allocated to another schedule. For example, major construction performed by the prime contractor (e.g., construction of a vitrification facility) related to

environmental management should be grouped with other construction projects using the construction schedule, while minor construction (e.g., construction of temporary facility in which to collect low level waste) incidental to environmental management should remain grouped with other environmental management projects using the Environmental Management schedule. No definitions of fee schedules were added to DEAR 970.15404–4–5.

The Notice of Proposed Rulemaking stated at DEAR 970.15404–4–6(c): ''the fee base is to be allocated to the category reflecting the work to be performed,'' but did not state that each schedule should be used no more than once to calculate fee for an annual period. Dividing work and applying a fee schedule multiple times in a year would artificially raise the fee for the total work. This is because the fee rate declines as the total fee base increases. Each fee schedule is intended to apply annually to the total work of a particular type. DEAR 970.15404–4–6(e) was added to the final rule to clearly state this.

Nevertheless, in unusual circumstances, e.g., where fee is to be determined for work which (1) is distinct, but related and of such magnitude that combining it for application against one schedule will result in an unreasonably low fee, or (2) covers more than an annual period such that combining the total work for application against one schedule will result in an unreasonably low fee, a schedule may be used more than once during a fee cycle with the approval of the Procurement Executive, or designee.

Item 3—Authority

Comment: Four commenters recommended decreasing the approval level of decision authority from the Procurement Executive, or designee, to the Contracting Officer in areas of: base fee, total available fees exceeding fee schedules, and establishing fees for longer than the funding cycle. One commenter recommended increasing the level of decision authority from the Field Office Manager to DOE Headquarters for withholding earned fee under the ''Conditional Payment of Fee, Profit, or Incentives'' clause because of its subjective and unilateral basis, while another commenter recommended that determinations to withhold fee be made by the Contracting Officer with concurrence of the Procurement Executive and the Department's General Counsel.

Response: The levels of decision authority specified in the fee policy reflect a balance between DOE Operations/Field Office Mangers and the Procurement Executive, or designee, for flexibility and authority to support mission objectives and establish consistency in the Department's application of fee. At this time, generally, authority regarding operational decisions is with DOE Operations/Field Office Managers, and Department-wide application of fee consistency decisions, including annual total available fee amounts not established in accordance with DEAR 970.15404–4 is with the Procurement Executive, or designee. As such, it has been determined that the Department will retain in the final rule Procurement Executive, or designee, approvals listed in the Notice of Proposed Rulemaking to reflect these considerations.

Item 4—Special Considerations: Cost-Plus-Award-Fee

Comment: Six commenters recommended changes to the Facility/Task Categories and associated Classification Factors at DEAR 970.15404–4–8 in several areas. The first area was that the fee policy give special consideration for facilities on Environmental Protection Agency's National Priority List (NPL) since higher risks are involved. Commenters recommended that those NPL-designated facilities continue, as stated in the current DEAR, to be classified at the site and/or contract level in recognition of the contractor's overall integration responsibilities and asked DOE to consider work at NPL sites to be among the ''riskiest'' work for DOE. The second comment area was that research and development (R&D) conducted at a laboratory was assigned too low a classification factor (lower than current DEAR) which three commenters believed downgraded the importance of R&D when laboratory R&D contractors are subject to the same risks as non-laboratory contractors. Two additional commenters recommended broadening the considerations to also consider financial risk, degree of managerial skill, and value of the task to DOE. They stated the considerations fall short in that they focus exclusively on the technical scope of work, and strongly urged DOE to consider other non-technical contractor challenges in its selection of Facility/Task Categories. Also, clarification was requested regarding the assignment of Facility/Task Categories and Classification Factors to the construction effort associated with the Facility/Task Categories.

Response: The effort performed at NPL sites is included in the Facility/Task Categories based on the primary focus of the effort to be performed. NPL sites are all different. NPL work is at different stages of the environmental cleanup process, which impacts the amount of technical uncertainty and information available to determine risk to the Government. The work at the various sites has different waste types, components, special handling requirements, and regulatory requirements and should be classified accordingly. The Facility/Task Categories and associated Classification Factors accommodate the variety of categories of work and associated risks. Each category is assigned a factor by which the calculated fixed fee associated with that work should be increased if fee is no longer to be fixed, but tied entirely to performance. This factor reflects the potential risk of not earning the fee. It is not the Department's intent to create an equal progression between the factors associated with the different categories. With the creation of a Facility/Task Category for the performance of R&D work in a laboratory, performance risk is less on a relative scale, and, therefore, the factor of 1.25 remains unchanged from the Notice of Proposed Rulemaking at DEAR 970.15404–4–8(d).

The Notice of Proposed Rulemaking at DEAR 970.15404–4–8(c) moves away from past approaches where a factor was applied on a site wide basis to one where the factor is applied at the work element level, which supports performance-based contracting concepts. Assignment of Facility/Task Categories and associated Classification Factors should be based on the technology used or the inherent risk of the work.

DEAR 970.15404–4–4(b) in the Notice of Proposed Rulemaking allows judgmental evaluation of eight significant factors and the assignment of appropriate fee values according to financial and management risk. The value of tasks to DOE is reflected in the requirements subject to incentives, the amount of fee, and the allocation of fee.

The final rule was revised at DEAR 970.15404–4–8(e) to clarify that construction directly supporting work in the various Facility/Task Categories is to be included in each Facility/Task Category.

Item 5—Fee Amount

A. Comment: Four commenters stated that the Notice of Proposed Rulemaking appears to reduce available fees by eliminating base fee, requiring fee discounts in competitive solicitations, and expanding the scope of DEAR 970.5204–86, ''Conditional Payment of

Fee, Profit, or Incentives'' clause. These commenters recommended that no maximum available fee be set in competitive solicitations, that the policy should be a guideline not a means of ''fee fixing'' beyond statutory limits (FAR 15.404–4(c)(4)(i)), and that greater reliance be placed on competition and negotiation.

Response: As part of the process of developing a final rule fee policy, DOE performed analysis using historical cost and fee data from actual contracts and applied different approaches to fee calculation as well as different variations of the fee policy. Additionally, DOE analyzed all data for FY 98 comparing total available fees as calculated by the current DEAR, the Notice of Proposed Rulemaking, and actual total available fee awarded. The FY 98 data reinforced previous analyses. After adjusting for the effects of inflation in the proposed fee schedules, total available fees calculated as set forth in the Notice of Proposed Rulemaking tended to be somewhat higher than those calculated under the current DEAR. This reflects, among other things, the greater risk associated with earning those fees. It was the Department's specific intent to provide a greater risk-reward ratio. The notable exception to somewhat higher fees was the total available fees tied to performance calculated for nonprofit organizations operating the Department's laboratories. In those cases where fee was paid to nonprofits in the past, the fees calculated under the final rule were lower than those previously awarded, due to the introduction of the new Facility/Task Category ''D'' and ''1.25'' factor for the performance of R&D in a laboratory in proposed DEAR 970.15404–4–8(d). However, under the final rule, not only nonprofit organizations but also educational institutions may be paid fee.

Another facet of the fee policy which was observed by commenters to potentially reduce fee is its application to competitive solicitations. In most cases where the actual total available fee amount had been established as part of a competitive award process, the fees tended to be higher than the total available fees calculated using either the current DEAR or the Notice of Proposed Rulemaking. The Department has observed that competition forces on fee were not adequate given the weight generally attached to fee in the source selection process. Accordingly, DEAR 970.15404–4–1(f) is intended to establish the maximum available fee and fee amount targeted for negotiation for competitive solicitations or the initiation of negotiations for an extension of an existing contract. In view of this, the final fee rule remains unchanged for contracts at DEAR 970.15404–4–1(f), which was renumbered from DEAR 970.15404–4–1(d) and DEAR 970.5204–88 Limitation on Fee clause, stating the requirement that fixed fee and total available fee proposed not exceed the limits set forth in the policy. Fees that are proposed below the limits set in the Notice of Proposed Rulemaking and set by the final rule may be considered and evaluated as part of the award process.

B. Comment: Use of Fixed Price contracts.

One commenter recommended that three basic principles should underlie the Department's fee policy. It agreed that the more risk a contractor is willing to take, the more fee should be available. As envisioned by the commenter, however, this would include not only putting fee at risk, as proposed in the Notice of Proposed Rulemaking, but also putting the reimbursement of otherwise allowable, allocable, and reasonable costs at risk. The commenter also recommended that when work elements cannot be fixed price, award fees tied to objective measures should be used to the maximum extent practicable. The commenter further recommended that when work elements cannot be fixed price and award fees are tied to either objective or subjective measures, each measure should be directly tied to a sum certain portion of the fee pool.

In addition, the commenter recommended that DOE include negative fee incentives in contracts when appropriate.

Response: DOE added DEAR 970.15404–4–1(b) to the final rule to list the basic principles underlying the Department's fee policy. These principles are: the amount of fee should reflect the financial risk assumed by the contractor; when work elements cannot be fixed price, incentive fees (including award fees) should be tied to objective measures to the maximum extent appropriate; and when work elements cannot be fixed price and award fees are employed, they should be tied to either objective or subjective measures with each measure to the maximum extent appropriate tied to a specific portion of the fee pool. These three basic principles were discussed at DEAR 970.15404–4–3 in the Notice of Proposed Rulemaking and expanded in the final rule. DEAR 970.15404–4–3 (c)(4) of the final rule clearly states that objective performance measures provide greater incentives for superior performance than do subjective performance measures and should be used to the maximum extent appropriate.

The Department did not accept the recommendation to go beyond putting fee at risk by putting the reimbursement of otherwise allowable, allocable, and reasonable costs at risk. DOE did, however, add criteria for using negative fee incentives at DEAR 970.15404–4–1(e). When performance is considered to be less than the level of performance set forth in the contract, the Department may adjust the fee determination to reflect such performance. DEAR 970.15404–4–3(c)(3) remains unchanged from the Notice of Proposed Rulemaking placing only fee at risk.

After consideration of the types of management and operating contracts utilized at the Department, the Department intends to structure contracts in such a manner that the risk is manageable, and therefore, assumable by the contractor. To the extent the requirements of DEAR Part 915 and FAR Parts 15 and 16 can be met, the most appropriate contract type and fee arrangement listed at DEAR 970.15404–4–3(a) should be used. If it is appropriate to use fixed price arrangements, the policy as proposed supports their use.

DEAR 970.15404–4–3(b) remains unchanged from the Notice of Proposed Rulemaking continuing to require Procurement Executive, or designee, approval for use of a cost-plus-fixed-fee contract.

C. Comment: Nine commenters recommended that DEAR 970.15404–4–6(b) either include all subcontracts and major contractor procurements, or not arbitrarily limit the amount of subcontract costs used to calculate the fee base. Their concerns focused on creating a bias for doing work in-house when subcontracting allows a contractor flexibility to adjust workforce, meet Contract Reform subcontracting initiatives, and comply with make or buy plans.

Response: The exclusion of at least 20% of subcontractor costs from the fee base at DEAR 970.15404–4–6(b)(2) of the final rule reflects the general principle that the contributions of the prime contractor to the accomplishment of the work may be less as the amount of subcontracting increases. We note however, that in some cases, there are types of subcontracts that are as managerially demanding and complex to administer as the supervision of the workforce directly performing work for the prime contractor.

The final rule is our attempt to balance these disparate aspects of subcontracting fee policy. It is not intended that the application of the

policy should discourage subcontracting, especially since the trend is toward outsourcing and privatization, but it is anticipated that in most cases, a portion of the subcontracting effort will require less oversight and involvement by the prime contractor. In that regard the rule allows the inclusion of up to 80% of subcontracting costs in the calculation of the fee base. It is noted that FAR Part 15 permits 100% of subcontract costs to be used in the base to calculate fee. However the FAR also provides that the amount of fee associated with subcontractor costs may be less than fee amounts associated with fee categories directly contributed to by the prime. As written, the final rule has been brought closer into conformance with the Federal contracting practices broadly applied under the FAR.

With respect to the concern that this adjustment may also negatively impact the Department's ability to incentivize prime contractors to contract work out as in the case of the management and integrating contracts, there are many factors which will influence proper implementation of ''make or buy'' decisions, with fee only one of them. However, if, in the opinion of the Contracting Officer, it is evident that the exclusion of the 20% of subcontract costs is adversely impacting the implementation of the Department's goals, the Contracting Officer shall seek a waiver from the Procurement Executive, or designee, to include additional subcontractor costs above the 80%.

In the final rule, DEAR 970.15404–4–6(b)(2) was clarified to state that the prime contractor's fee base shall exclude (1) at least 20% of the estimated cost or price of subcontracts and other major contractor procurements; and (2) up to 100% of such costs if they are of a magnitude or nature as to distort the technical and management effort actually required of the contractor.

D. Comment: One commenter stated the fee policy did not go far enough in providing an acceptable mix of incentives necessary to encourage accelerated closure of the Department's facilities. They stated that projects must have flexibility to link greater fee opportunity to real value to the Government from significant acceleration of schedule. They believed there is a negative incentive for contractors to significantly expedite schedule/reduce cost because such action frequently will result in reduction of earned fee during the life of the contract.

Response: It is beyond the scope of the fee policy to address the numerous ways incentives may be used, including their use in encouraging accelerated closure. However, with respect to accelerated closure, the Department is piloting the use of fees calculated using uncosted balances which result from achieved cost efficiency. The use of uncosted balances is being considered as a viable approach even though the Notice of Proposed Rulemaking precluded the use of any portion of an uncosted balance which has been previously included in a fee base used to calculate fee without the DEAR 970.15404–4–6(b)(9) waiver approval of the Procurement Executive, or designee. The concern the Department has in using an uncosted balance in calculating additional fee pertains to the accuracy of the estimates of the work which can be done within a given budget or the cost of the work scheduled to be performed. The approaches presently being explored attempt to ensure adequate fee is available to incentivize the acceleration of the work, while ensuring that the funds for its acceleration are available due to achieved efficiencies rather than to poor estimating. As an alternative approach, where cost, performance and schedule are negotiated and improved performance can be incentivized the requirements of DEAR Part 915 and FAR Parts 15 and 16 would apply rather than the DEAR Part 970 provisions.

DEAR 970.15404–4–6(b) remains unchanged from the Notice of Proposed Rulemaking in this area.

Item 6—Clauses

A. Comment: Several comments were received questioning the need for the Contracting Officer to retain the unilateral right to determine or modify requirements, specific incentives, and the amount and allocation of fee under DEAR 970.5204–54 Total Available Fee: Base Fee Amount and Performance Fee Amount. Also, commenters suggested that all unilateral decisions should be subject to appeal under the Disputes clause. A number of commenters suggested that the Performance Evaluation and Measurement Plan (PEMP) should be bilaterally established.

Response: DEAR 970.5204–54 Total Available Fee: Base Fee Amount and Performance Fee Amount clause continues to provide for the Contracting Officer to make unilateral determinations when the parties fail to reach agreement on work scope, cost, incentives, fee amounts and allocation, and fee determination. This right is retained due to the unique structure of the Department's major site management contracts. These contracts are awarded for a period of five years and usually contain an option for an additional five years; however, the scope of work is only defined for annual periods. The unilateral provision of the clause ensures that the Department can continue to require performance within defined bounds in the event of a disagreement with the contractor. The clause, DEAR 970.5204–54, has been changed from the Notice of Proposed Rulemaking to delete all reference to the Disputes clause of the contract. This change was made to reflect the fact that the policy will remain silent regarding the applicability of the Disputes clause to Contracting Officer decisions. It is the Department's position that applicability of the Contracts Dispute Act is provided by statute and needs no further amplification in the DOE acquisition policy.

The PEMP is intended as a management tool for the government's use. This administrative plan has never been intended to be a comprehensive, legally binding contractual document. To have an administrative plan, which is subject to many changes, bilaterally agreed to would place an undue administrative burden on the parties involved; therefore, DEAR 970.5204–54(d) was not changed in this area.

B. Comment: Several comments questioned the equity of DEAR 970.5204–86 Conditional Payment of Fee, Profit or Incentives clause which allows the government to unilaterally and subjectively reduce any otherwise earned fee, profit, or share of cost savings based on the occurrence of any one of several events. Several commenters sought clarification of the circumstances which would trigger the first two conditions identified in paragraphs (a) and (b) of the clause. A number of commenters requested that if the clause is to be used that it be restricted regarding the amount of fee, profit or contractor's share of cost savings which is subject to adjustment.

Response: The Department is moving toward better defined performance-based contracts for the majority of its management and operating and similar contracts. However, these contracts retain broad requirements, characteristics and concerns which cannot be ignored when determining fee. The Department, in its implementation of performance-based contracting, is attempting to narrow the focus to critical performance while maintaining acceptable performance overall. However, because of the breadth of the Department's requirements at its various sites, there is the potential that while focus is given to the performance of critical requirements, the

performance of other requirements, either due to their number or the cross cutting impact of many of them, if performed poorly, could seriously jeopardize overall contract performance. The use of this clause affords the Department flexibility to emphasize critical requirements (through the direct association to fee) while not ignoring the significant number of other requirements which still must be performed. This also allows the contractor to reasonably allocate its resources. The clause is intended to be more specific than similar clauses in the previous management and operating award fee contracts, but not so specific as to unduly limit the Department's recourse in the event of poor performance.

Regarding paragraph (a) of the clause, the failure to have developed and obtained an approved Safety Management System by an agreed-to date would be a trigger. Failure to meet agreed upon performance commitments would also be a trigger, but any action taken is at the discretion of the DOE Operations/Field Office Manager. Regarding paragraph (b) of the clause, any of the examples in the clause, or incidences of a similar magnitude, would act as a trigger, but again any action taken is at the discretion of the DOE Operations/Field Office Manager. In both instances, the triggering events should be well defined (e.g., the system and performance commitments) and agreed to between the DOE and the contractor. With regard to catastrophic events, DOE believes the language and examples provide sufficient clarity and definition.

The DOE Operations/Field Office Manager also has been given broad latitude to exercise judgement in the application of any adjustment to fee in recognition of possible mitigating circumstances associated with any occurrence.

The comments regarding restrictions on the amount of fee, profit or contractor's share of cost savings which is subject to adjustment were considered; and DOE revised the clause limiting the adjustment which could be made due to poor technical and cost performance.

C. Comment: Five commenters stated that DEAR 970.5204–87 Cost Reduction clause was too limiting, overly prescriptive, and administratively burdensome. They stated that the complex administrative requirements in the clause may turn out to be a disincentive. One commenter asserted that the clause should only be used where there are adequate baseline definitions and the likelihood of savings sufficient to warrant the administrative and infrastructure expense.

Response: This clause provides the opportunity for the Department to benefit from valid cost reductions, while providing contractors additional fee or a share of cost savings. Because the cost of most management and operating and similar contracts is not negotiated, the clause is more limiting and prescriptive than the standard value engineering clause found in the FAR. Accordingly, no changes were made in this area at DEAR 970.5204–87. The alternative, which is allowed by the fee policy, is to negotiate the cost of the work, rather than basing the cost of the work on budgets, and incorporate the FAR clauses. The clause defines a design, process, or method change as one which has established cost, technical and schedule baselines.

D. Comment: Two commenters stated that DEAR 970.5204–88 Limitation on Fee creates artificial maximum fees beyond statutory limitation and will not attract quality contractors.

Response: The fee amounts established by the revision to the fee policy are believed reasonable given the fact that fee is not heavily weighted in the Department's source selection evaluation criteria and that the competitive market place has not kept proposed fees within the policy limitations. For further discussion see Item 5A comment and response regarding fee discounts in competitive solicitations. DEAR 970.5204–88 remains unchanged in this area.

Item 7—Clarifications

Comment: Several commenters included minor clarifications, editorial comments or consistent terminology recommendations in the areas of ''annual'' funding cycle, fee amounts, and performance incentives; references to sections and subsections within the final rule; logical order; use of subjective measures; and determinations by the Government, Fee Determination Official, and Manager.

Response: In almost every case, the nonsubstantive revisions for clarity were made and are contained in the final rule. The clarification of ''annual'' funding cycles, ''annual'' fee amounts, and ''annual'' performance incentives was added to distinguish between fees now allowed to be negotiated for the life of the contract for laboratory operation; however, fee schedules both currently and historically are based on annual fee bases. For clarification, state taxes were added to DEAR 970.15404–4–6(b) as a specific exclusion to fee base. They previously were intended to fall within the exclusion category of costs which are of such magnitude or nature as to distort the technical and management effort actually required of the contractor. For consistency, references to Government determinations were changed to DOE Operations/Field Office Manager determinations. Subsections were renumbered to conform with the October 23, 1998 (63 FR 56849) DEAR numbering changes to conform with September 30, 1997 (62 FR 51224) FAR Part 15 rewrite.

The following crosswalk reflects the DEAR numbering changes from the Notice of Proposed Rulemaking to the final rule:

Notice of proposed rulemaking	Final rule
915.971–5	915.404–4–71–5
915.972	915.404–4–72
970.1509	970.15404–4
970.1509–1	970.15404–4–1
970.1509–2	970.15404–4–2
970.1509–3	970.15404–4–3
970.1509–4	970.15404–4–4
970.1509–5	970.15404–4–5
970.1509–6	970.15404–4–6
970.1509–7	970.15404–4–7
970.1509–8	970.15404–4–8
970.1509–9	970.15404–4–9
970.1509–10	970.15404–4–10
970.1509–11	970.15404–4–11
970.5204–54	970.5204–54
970.5204–XX	970.5204–86
970.5204–YY	970.5204–87
970.5204–ZZ	970.5204–88

III. Procedural Requirements

A. Review Under Executive Order 12866

This regulatory action has been determined not to be a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, this action was not subject to review, under that Executive Order, by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' (61 FR 4729, February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a) and section 3(b) of Executive Order 12988 specifically requires that Executive

agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed regulations meet the relevant standards of Executive Order 12988.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. Currently all 42 of the Department's management and operating and other site management operators are large businesses. Based on the history of the Department and the requirements contained in its management and operating contracts, the rule will not affect small entities as small businesses generally do not have the resources required to manage and operate the complex activities at the Department's largest sites. The rule establishes the policy for the payment of fee to prime contractors. There are no mandatory flowdown requirements to subcontractors and no significant economic impact on subcontractors. One commenter suggested that the fee base adjustment for subcontract costs may have an impact on small entities by altering the prime contractor's ''Make or Buy'' decisions. The fee base adjustment is a clarification of rather than a major change to the current DEAR which excludes subcontract costs if they distort the prime's contribution. The extent a prime subcontracts work is in accordance with its ''Make or Buy Plan,'' and while fee may be a factor, the decision to not subcontract is not driven by fee considerations. Based on the foregoing reasons, the Department certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or record keeping requirements are imposed by this rule. Accordingly, no Office of Management and Budget clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled ''Federalism'' (52 FR 41685, October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. The Department has determined that this rule will not have a substantial direct effect on the institutional interests or traditional functions of States.

F. Review Under the National Environmental Policy Act

Pursuant to the Council on Environmental Quality Regulations (40 CFR 1500–1508), the Department has established guidelines for its compliance with the provisions of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*). Pursuant to Appendix A of Subpart D of 10 CFR 1021, National Environmental Policy Act Implementing Procedures (Categorical Exclusion A6), the Department has determined that this rule is categorically excluded from the need to prepare an environmental impact statement or environmental assessment.

G. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, the Department of Energy will report to Congress promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

H. Review Under the Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) generally requires a Federal agency to perform a detailed assessment of costs and benefits of any rule imposing a Federal Mandate with costs to State, local or tribal governments, or to the private sector, of $100 million or more. This rulemaking only affects private sector entities, and the impact is less than $100 million.

List of Subjects in 48 CFR Parts 915 and 970

Government procurement.

Issued in Washington, DC, on March 2, 1999.

Richard H. Hopf,

Director, Office of Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 915—CONTRACTING BY NEGOTIATION

1. The authority citation for Part 915 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. Subsection 915.404–4–71–5 is amended by revising paragraphs (d), (f), and (h) to read as follows:

§ 915.404–4–71–5 Fee schedules.

* * * * *

(d) The following schedule sets forth the base for construction contracts:

CONSTRUCTION CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to $1 Million	.....	.....	5.47
1,000,000	54,700	5.47	3.88
3,000,000	132,374	4.41	3.28

CONSTRUCTION CONTRACTS SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
5,000,000	198,014	3.96	2.87
10,000,000	341,328	3.41	2.60
15,000,000	471,514	3.14	2.20
25,000,000	691,408	2.77	1.95
40,000,000	984,600	2.46	1.73
60,000,000	1,330,304	2.22	1.56
80,000,000	1,643,188	2.05	1.41
100,000,000	1,924,346	1.92	1.26
150,000,000	2,552,302	1.70	1.09
200,000,000	3,094,926	1.55	0.80
300,000,000	3,897,922	1.30	0.68
400,000,000	4,581,672	1.15	0.57
500,000,000	5,148,364	1.03	
Over $500 Million	5,148,364	.....	0.57

* * * * *

(f) The following schedule sets forth the base for construction management contracts:

CONSTRUCTION MANAGEMENT CONTRACTS SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to $1 Million	.....	.....	5.47
1,000,000	54,700	5.47	3.88
3,000,000	132,374	4.41	3.28
5,000,000	198,014	3.96	2.87
10,000,000	341,328	3.41	2.60
15,000,000	471,514	3.14	2.20
25,000,000	691,408	2.77	1.95
40,000,000	984,600	2.46	1.73
60,000,000	1,330,304	2.22	1.56
80,000,000	1,643,188	2.05	1.41
100,000,000	1,924,346	1.92	1.26
150,000,000	2,552,302	1.70	1.09
200,000,000	3,094,926	1.55	0.80
300,000,000	3,897,922	1.30	0.68
400,000,000	4,581,672	1.15	0.57
500,000,000	5,148,364	1.03	
Over $500 Million	5,148,364	.....	0.57

* * * * *

(h) The schedule of fees for consideration of special equipment purchases and for consideration of the subcontract program under a construction management contract is as follows:

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to $1 Million	.....	.....	1.64
1,000,000	16,410	1.64	1.09
2,000,000	27,350	1.37	0.93
4,000,000	45,948	1.15	0.77
6,000,000	61,264	1.02	0.71
8,000,000	75,486	0.94	0.66
10,000,000	88,614	0.89	0.61
15,000,000	119,246	0.79	0.53
25,000,000	171,758	0.69	0.47
40,000,000	242,868	0.61	0.43
60,000,000	329,294	0.55	0.39
80,000,000	406,968	0.51	0.37
100,000,000	480,266	0.48	0.28

SPECIAL EQUIPMENT PURCHASES/SUBCONTRACT WORK SCHEDULE—Continued

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
150,000,000	619,204	0.41	0.23
200,000,000	732,980	0.37	0.13
300,000,000	867,542	0.29	.....
Over $300 Million	867,542	.....	013

3. Subsection 915.404–4–72 is amended by revising the introductory text of paragraph (a) to read as follows:

915.404–4–72 Special considerations for cost-plus-award-fee contracts.

(a) When a contract is to be awarded on a cost-plus-award-fee basis several special considerations are appropriate. Fee objectives for management and operating contracts or other contracts as determined by the Procurement Executive, including those using the Construction, Construction Management, or Special Equipment Purchases/Subcontract Work schedules from 48 CFR 915.404–4–71–5, shall be developed pursuant to the procedures set forth in 48 CFR 970.15404–4–8. Fee objectives for other cost-plus-award-fee contracts shall be in accordance with 48 CFR 916.404–2 and be developed as follows:

* * * * *

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

4. The authority citation for Part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254).

5. Subsection 970.15404–4, including subsections 970.15404–4–1 through 970.15404–4–11, is revised to read as follows:

970.15404–4 Fees for management and operating contracts.

This subsection sets forth the Department's policies on fees for management and operating contracts and may be applied to other contracts as determined by the Procurement Executive, or designee.

970.15404–4–1 Fee policy.

(a) DOE management and operating contractors may be paid a fee in accordance with the requirements of this subsection.

(b) There are three basic principles underlying the Department's fee policy:

(1) The amount of available fee should reflect the financial risk assumed by the contractor.

(2) It is the policy of the Department, when work elements cannot be fixed price, incentive fees (including award fees) tied to objective measures should be used to the maximum extent appropriate.

(3) When work elements cannot be fixed price and award fees are employed, they should be tied to either objective or subjective measures. Each measure should, to the maximum extent appropriate, be directly tied to a specific portion of the fee pool.

(c) Fee objectives and amounts are to be determined for each contract. Standard fees or across-the-board fee agreements will not be used or made. Due to the nature of funding management and operating contracts, it is anticipated that fee shall be established in accordance with the annual funding cycle; however, with the prior approval of the Procurement Executive, or designee, a longer period may be used where necessary to incentivize performance objectives that span funding cycles or to optimize cost reduction efforts.

(d) Annual fee amounts shall be established in accordance with this subsection. Annual amounts shall not exceed maximum amounts derived from the appropriate fee schedule (and Classification Factor, if applicable) unless approved in advance by the Procurement Executive, or designee. In no event shall any fee exceed statutory limits imposed by 41 U.S.C. 254(b).

(e)(1) Contracting Officers shall include negative fee incentives in contracts when appropriate. A negative fee incentive is one in which the contractor will not be paid the full target fee amount when the actual performance level falls below the target level established in the contract.

(2) Negative fee incentives may only be used when:

(i) A target level of performance can be established, which the contractor can reasonably be expected to reach;

(ii) The value of the negative incentive is commensurate with the lower level of performance and any additional administrative costs;

(iii) Factors likely to prevent attainment of the target level of performance are clearly within the control of the contractor; and

(iv) The contract indicates clearly a level below which performance is not acceptable.

(f) Prior to the issuance of a competitive solicitation or the initiation of negotiations for an extension of an existing contract, the HCA shall coordinate the maximum available fee, as allowed by 48 CFR 970.15404–4, and the fee amount targeted for negotiation, if less, with the Procurement Executive, or designee. Solicitations shall identify maximum available fee under the contract and may invite offerors to propose fee less than the maximum available.

(g) When a contract subject to this subsection requires a contractor to use its own facilities or equipment, or other resources to make its own cost investment for contract performance, (e.g., when there is no letter-of-credit financing) consideration may be given, subject to approval by the Procurement Executive, or designee, to increasing the total available fee amount above that otherwise provided by this subsection. (h) Multiple fee arrangements should be used in accordance with 48 CFR 970.15404–4–3.

970.15404–4–2 Special considerations: laboratory management and operation.

(a) For the management and operation of a laboratory, the contracting officer shall consider whether any fee is appropriate. Considerations should include:

(1) The nature and extent of financial or other liability or risk assumed or to be assumed under the contract;

(2) The proportion of retained earnings (as established under generally accepted accounting methods) that are utilized to fund the performance of work related to the DOE contracted effort;

(3) Facilities capital or capital equipment acquisition plans;

(4) Other funding needs, to include contingency funding, working capital funding, and provision for funding unreimbursed costs deemed ordinary and necessary;

(5) The utility of fee as a performance incentive; and

(6) The need for fee to attract qualified contractors, organizations, and institutions.

(b) In the event fee is considered appropriate, the contracting officer shall determine the amount of fee in accordance with this subsection.

(1) Costs incurred in the operation of a laboratory that are allowable and allocable under the cost principles (i.e., commercial using FAR 31.2, nonprofit using OMB Circular A–122, or university-affiliated using OMB Circular A–21), regulations, or statutes applicable to the operating contractor should be classified as direct or indirect (overhead or G&A) charges to the contract and not included as proposed fee. Exceptions must be approved by the Procurement Executive, or designee.

(2) Except as specified in 48 CFR 970.15404–4–2(c)(3), the maximum total amount of fee shall be calculated in accordance with 48 CFR 970.15404–4–4 or 48 CFR 970.15404–4–8, as appropriate. The total amount of fee under any laboratory management and operating contract or other designated contract shall not exceed, and may be significantly less than, the result of that calculation. In determining the total amount of fee, the contracting officer shall consider the evaluation of the factors in paragraph (a) of this subsection as well as any benefits the laboratory operator will receive due to its tax status.

(c) In the event fee is considered appropriate, the contracting officer shall establish the type of fee arrangement in accordance with this subsection.

(1) The amount of fee may be established as total available fee with a base fee portion and a performance fee portion. Base fee, if any, shall be an amount in recognition of the risk of financial liability assumed by the contractor and shall not exceed the cost risk associated with those liabilities or the amount calculated in accordance with 48 CFR 970.15404–4–4, whichever is less. The total available fee, excepting any base fee, shall normally be associated with performance at or above the target level of performance as defined by the contract. If performance in either of the two general work categories appropriate for laboratories (science/technology and support) is rated at less than the target level of performance, the total amount of the available fee shall be subject to downward adjustment. Such downward adjustment shall be subject to the terms of 48 CFR 970.5204–86, ''Conditional Payment of Fee, Profit, or Incentives,'' clause, if contained in the contract.

(2) The amount of fee may be established as a fixed fee in recognition of the risk of financial liability to be assumed by the contractor, with such fixed fee amount not exceeding the cost risk associated with the liabilities assumed or the amount of fee calculated in accordance with 48 CFR 970.15404–4–4, whichever is less.

(3) If the fixed fee or total available fee exceeds 75% of the fee that would be calculated per 48 CFR 970.15404–4–4 or 48 CFR 970.15404–4–8; or if a fee arrangement other than one of those set forth in paragraphs (c) (1) or (2) of this subsection is considered appropriate, the approval of the Procurement Executive, or designee, shall be obtained prior to its use.

(4) Fee, if any, as well as the type of fee arrangement, will normally be established for the life of the contract. It will be established at time of award, as part of the extend/compete decision, at the time of option exercise, or at such other time as the parties can mutually reach agreement, e.g., negotiations. Such agreement shall require the approval of the Procurement Executive, or designee.

(5) Fee established for longer than one year shall be subject to adjustment in the event of a significant change (greater than +/-10% or a lessor amount if appropriate) to the budget or work scope.

(6) Retained earnings (reserves) shall be identified and a plan for their use and disposition developed.

(7) The use of retained earnings as a result of performance of laboratory management and operation may be restricted if the operator is an educational institution.

970.15404–4–3 Types of contracts and fee arrangements.

(a) Contract types and fee arrangements suitable for management and operating contracts may include cost, cost-plus-fixed-fee, cost-plus-award-fee, cost-plus-incentive-fee, fixed-price incentive, firm-fixed-price or any combination thereof. See FAR 16.1. In accordance with 48 CFR 970.15404–4–1(b)(1), the fee arrangement chosen for each work element should reflect the financial risk for project failure that contractors are willing to accept. Contracting officials shall structure each contract and the elements of the work in such a manner that the risk is manageable and, therefore, assumable by the contractor.

(b) Consistent with the concept of a performance-based management contract, those contract types which incentivize performance and cost control are preferred over a cost-plus-fixed-fee arrangement. Accordingly, a cost-plus-fixed-fee contract in instances other than those set forth in 48 CFR 970.15404–4–2(c)(2) may only be used when approved in advance by the Procurement Executive, or designee.

(c) A cost-plus-award-fee contract is generally the appropriate contract type for a management and operating contract.

(1) Where work cannot be adequately defined to the point that a fixed price contract is acceptable, the attainment of acquisition objectives generally will be enhanced by using a cost-plus-award-fee contract or other incentive fee arrangement to effectively motivate the contractor to superior performance and to provide the Department with flexibility to evaluate actual performance and the conditions under which it was achieved.

(2) The construct of fee for a cost-plus-award-fee management and operating contract is that total available fee will equal a base fee amount and a performance fee amount.

The total available fee amount including the performance fee amount the contractor may earn, in whole or in part during performance, shall be established annually (or as otherwise agreed to by the parties and approved by the Procurement Executive, or designee), in an amount sufficient to motivate performance excellence.

(3) However, consistent with concepts of performance-based contracting, it is Departmental policy to place fee at risk based on performance. Accordingly, a base fee amount will be available only when approved in advance by the Procurement Executive, or designee, except as permitted in 48 CFR 970.15404–4–2(c)(1). Any base fee amount shall be fixed, expressed as a percent of the total available fee at inception of the contract, and shall not exceed that percent during the life of the contract.

(4) The performance fee amount may consist of an objective fee component and a subjective fee component. Objective performance measures, when appropriately applied, provide greater incentives for superior performance than do subjective performance measures and should be used to the maximum extent appropriate. Subjective measures should be used when it is not feasible to devise effective predetermined objective measures applicable to cost, technical performance, or schedule for particular work elements.

(d) Consistent with performance-based contracting concepts,

performance objectives and measures related to performance fee should be as clearly defined as possible and, where feasible, expressed in terms of desired performance results or outcomes. Specific measures for determining performance achievement should be used. The contract should identify the amount and allocation of fee to each performance result or outcome.

(e) Because the nature and complexity of the work performed under a management and operating contract may be varied, opportunities may exist to utilize multiple contract types and fee arrangements. Consistent with paragraph (a) of this subsection and FAR 16.1, the contracting officer should apply that contract type or fee arrangement most appropriate to the work component. However, multiple contract types or fee arrangements:

(1) Must conform to the requirements of DEAR Part 915 and FAR Parts 15 and 16, and

(2) Where appropriate to the type, must be supported by

(i) Negotiated costs subject to the requirements of the Truth in Negotiations Act,

(ii) A pre-negotiation memorandum, and

(iii) A plan describing how each contract type or fee arrangement will be administered.

(f) Cost reduction incentives are addressed in 48 CFR 970.5204–87, ''Cost Reduction.'' This clause provides for incentives for quantifiable cost reductions associated with contractor proposed changes to a design, process, or method that has an established cost, technical, and schedule baseline, is defined, and is subject to a formal control procedure. The clause is to be included in management and operating contracts as appropriate. Proposed changes must be: initiated by the contractor, innovative, applied to a specific project or program, and not otherwise included in an incentive under the contract. Such cost reduction incentives do not constitute fee and are not subject to statutory or regulatory fee limitations; however, they are subject to all appropriate requirements set forth in this regulation.

(g) Operations and field offices shall take the lead in developing and implementing the most appropriate pricing arrangement or cost reduction incentive for the requirements. Pricing arrangements which provide incentives for performance and cost control are preferred over those that do not. The operations and field offices are to ensure that the necessary resources and infrastructure exist within both the contractor's and government's organizations to prepare, evaluate, and administer the pricing arrangement or cost reduction incentive prior to its implementation.

970.15404–4–4 General considerations and techniques for determining fixed fees.

(a) The Department's fee policy recognizes that fee is remuneration to contractors for the entrepreneurial function of organizing and managing resources, the use of their resources (including capital resources), and, as appropriate, their assumption of the risk that some incurred costs (operating and capital) may not be reimbursed.

(b) Use of a purely cost-based structured approach for determining fee objectives and amounts for DOE management and operating contracts is inappropriate considering the limited level of contractor cost, capital goods, and operating capital outlays for performance of such contracts. Instead of being solely cost-based, the desirable approach calls for a structure that allows evaluation of the following eight significant factors, as outlined in order of importance, and the assignment of appropriate fee values (subject to the limitations on fixed fee in 48 CFR 970.15404–4–5):

(1) The presence or absence of financial risk, including the type and terms of the contract;

(2) The relative difficulty of work, including specific performance objectives, environment, safety and health concerns, and the technical and administrative knowledge, and skill necessary for work accomplishment and experience;

(3) Management risk relating to performance, including:

(i) Composite risk and complexity of principal work tasks required to do the job;

(ii) Labor intensity of the job;

(iii) Special control problems; and

(iv) Advance planning, forecasting and other such requirements;

(4) Degree and amount of contract work required to be performed by and with the contractor's own resources, as compared to the nature and degree of subcontracting and the relative complexity of subcontracted efforts, subcontractor management and integration;

(5) Size and operation (number of locations, plants, differing operations, etc.);

(6) Influence of alternative investment opportunities available to the contractor (i.e., the extent to which undertaking a task for the Government displaces a contractor's opportunity to make a profit with the same staff and equipment in some other field of activity);

(7) Benefits which may accrue to the contractor from gaining experience and knowledge of how to do something, from establishing or enhancing a reputation, or from having the opportunity to hold or expand a staff whose loyalties are primarily to the contractor; and

(8) Other special considerations, including support of Government programs such as those relating to small and minority business subcontracting, energy conservation, etc.

(c) The total fee objective for a particular annual fixed fee negotiation is established by evaluating the above factors, assigning fee values to them, and totaling the resulting amounts (subject to limitations on total fixed fee in 48 CFR 970.15404–4–5).

970.15404–4–5 Calculating fixed fee.

(a) In recognition of the complexities of the fee determination process, and to assist in promoting a reasonable degree of consistency and uniformity in its application, the following fee schedules set forth the maximum amounts of fee that contracting activities are allowed to award for a particular fixed fee transaction calculated annually.

(b) Fee schedules representing the maximum allowable annual fixed fee available under management and operating contracts have been established for the following management and operating contract efforts:

(1) Production;

(2) Research and Development; and

(3) Environmental Management.

(c) The schedules are:

PRODUCTION EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to $1 Million	.....	.....	7.66
1,000,000	76,580	7.66	6.78

PRODUCTION EFFORTS—Continued

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
3,000,000	212,236	7.07	6.07
5,000,000	333,670	6.67	4.90
10,000,000	578,726	5.79	4.24
15,000,000	790,962	5.27	3.71
25,000,000	1,161,828	4.65	3.35
40,000,000	1,663,974	4.16	2.92
60,000,000	2,247,076	3.75	2.57
80,000,000	2,761,256	3.45	2.34
100,000,000	3,229,488	3.23	1.45
150,000,000	3,952,622	2.64	1.12
200,000,000	4,510,562	2.26	0.61
300,000,000	5,117,732	1.71	0.53
400,000,000	5,647,228	1.41	0.45
500,000,000	6,097,956	1.22	.....
Over $500 Million	6,097,956	.....	0.45

RESEARCH AND DEVELOPMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to $1 Million	.....	.....	8.42
1,000,000	84,238	8.42	7.00
3,000,000	224,270	7.48	6.84
5,000,000	361,020	7.22	6.21
10,000,000	671,716	6.72	5.71
15,000,000	957,250	6.38	4.85
25,000,000	1,441,892	5.77	4.22
40,000,000	2,075,318	5.19	3.69
60,000,000	2,813,768	4.69	3.27
80,000,000	3,467,980	4.33	2.69
100,000,000	4,006,228	4.01	1.69
150,000,000	4,850,796	3.23	1.14
200,000,000	5,420,770	2.71	0.66
300,000,000	6,083,734	2.03	0.58
400,000,000	6,667,930	1.67	0.50
500,000,000	7,172,264	1.43	.....
Over $500 Million	7,172,264	.....	0.50

ENVIRONMENTAL MANAGEMENT EFFORTS

Fee base (dollars)	Fee (dollars)	Fee (per cent)	Incr. (per cent)
Up to $1 Million	.....	.....	7.33
1,000,000	73,298	7.33	6.49
3,000,000	203,120	6.77	5.95
5,000,000	322,118	6.44	5.40
10,000,000	592,348	5.92	4.83
15,000,000	833,654	5.56	4.03
25,000,000	1,236,340	4.95	3.44
40,000,000	1,752,960	4.38	3.29
60,000,000	2,411,890	4.02	3.10
80,000,000	3,032,844	3.79	2.49
100,000,000	3,530,679	3.53	1.90
150,000,000	4,479,366	2.99	1.48
200,000,000	5,219,924	2.61	1.12
300,000,000	6,337,250	2.11	0.88
400,000,000	7,219,046	1.80	0.75
500,000,000	7,972,396	1.59	0.58
750,000,000	9,423,463	1.26	0.55
1,000,000,000	10,786,788	1.08	.....
Over 1.0 Billion	10,786,788	.....	0.55

970.15404–4–6 Fee base.

(a) The fee base is an estimate of necessary allowable costs, with some exclusions. It is used in the fee schedules to determine the maximum annual fee for a fixed fee contract. That portion of the fee base that represents the cost of the Production, Research and Development, or Environmental Management work to be performed, shall be exclusive of the cost of source and special nuclear materials; estimated costs of land, buildings and facilities whether to be leased, purchased or constructed; depreciation of Government facilities; and any estimate of effort for which a separate fee is to be negotiated.

(b) Such portion of the fee base, in addition to the adjustments in paragraph (a) of this subsection, shall exclude:

(1) Any part of the estimated cost of capital equipment (other than special equipment) which the contractor procures by subcontract or other similar costs which is of such magnitude or nature as to distort the technical and management effort actually required of the contractor;

(2) At least 20% of the estimated cost or price of subcontracts and other major contractor procurements;

(3) Up to 100% of the estimated cost or price of subcontracts and other major contractor procurements if they are of a magnitude or nature as to distort the technical and management effort actually required of the contractor;

(4) Special equipment as defined in 48 CFR 970.15404–4–7;

(5) Estimated cost of Government-furnished property, services and equipment;

(6) All estimates of costs not directly incurred by or reimbursed to the operating contractor;

(7) Estimates of home office or corporate general and administrative expenses that shall be reimbursed through the contract;

(8) Estimates of any independent research and development cost or bid and proposal expenses that may be approved under the contract;

(9) Any cost of work funded with uncosted balances previously included in a fee base of this or any other contract performed by the contractor;

(10) Cost of rework attributable to the contractor; and

(11) State taxes.

(c) In calculating the annual fee amounts associated with the Production, Research and Development, or Environmental Management work to be performed, the fee base is to be allocated to the category reflecting the work to be performed and the appropriate fee schedule utilized.

(d) The portion of the fee base associated with the Production, Research and Development, or Environmental Management work to be performed and the associated schedules in this part are not intended to reflect the portion of the fee base or related compensation for unusual architect-engineer, construction services, or special equipment provided by the management and operating contractor. Architect-engineer and construction services are normally covered by special agreements based on the policies applying to architect-engineer or construction contracts. Fees paid for such services shall be calculated using the provisions of 48 CFR 915.404–4 relating to architect-engineer or construction fees and shall be in addition to the operating fees calculated for the Production, Research and Development, or Environmental Management work to be performed. Special equipment purchases shall be addressed in accordance with the provisions of 48 CFR 970.15404–4–7 relating to special equipment.

(e) No schedule set forth in 48 CFR 915.404–4–71–5 or 48 CFR 970.15404–4–5 shall be used more than once in the determination of the fee amount for an annual period, unless prior approval of the Procurement Executive, or designee, is obtained.

970.15404–4–7 Special equipment purchases.

(a) Special equipment is sometimes procured in conjunction with management and operating contracts. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment which shall not exceed the maximum fee allowable as established using the schedule in 48 CFR 915.404–4–71–5(h).

(b) In determining appropriate fees, factors such as complexity of equipment, ratio of procurement transactions to volume of equipment to be purchased and completeness of services should be considered. Where possible, the reasonableness of the fees should be checked by their relationship to actual costs of comparable procurement services.

(c) For purposes of this subsection, special equipment is equipment for which the purchase price is of such a magnitude compared to the cost of installation as to distort the amount of technical direction and management effort required of the contractor. Special equipment is of a nature that requires less management attention. When a contractor procures special equipment, the DOE negotiating official shall determine separate fees for the equipment using the schedule in 48 CFR 915.404–4–71–5(h). The determination of specific items of equipment in this category requires application of judgment and careful study of the circumstances involved in each project. This category of equipment would generally include:

(1) Major items of prefabricated process or research equipment; and

(2) Major items of preassembled equipment such as packaged boilers, generators, machine tools, and large electrical equipment. In some cases, it would also include special apparatus or devices such as reactor vessels and reactor charging machines.

970.15404–4–8 Special considerations: cost-plus-award-fee.

(a) When a management and operating contract is to be awarded on a cost-plus-award-fee basis, several special considerations are appropriate.

(b) All annual performance incentives identified under these contracts are funded from the annual total available fee, which consists of a base fee amount (which may be zero) and a performance fee amount (which typically will consist of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both).

(c) The annual total available fee for the contract shall equal the product of the fee(s) that would have been calculated for an annual fixed fee contract and the classification factor(s) most appropriate for the facility/task. If more than one fee schedule is applicable to the contract, the annual total available fee shall be the sum of the available fees derived proportionately from each fee schedule; consideration of significant factors applicable to each fee schedule; and application of a Classification Factor(s) most appropriate for the work.

(d) Classification Factors applied to each Facility/Task Category are:

Facility/task category	Classification factor
A	3.0
B	2.5
C	2.0
D	1.25

(e) The contracting officer shall select the Facility/Task Category after considering the following:

(1) Facility/Task Category A. The main focus of effort performed is related to:

(i) The manufacture, assembly, retrieval, disassembly, or disposal of nuclear weapons with explosive potential;

(ii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals with consideration given to the degree the nature of the work advances state of the art technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is significantly demanding when compared to similar industrial/DOE settings (i.e., nuclear energy processing, industrial environmental cleanup);

(iii) Construction of facilities such as nuclear reactors, atomic particle accelerators, or complex laboratories or industrial units especially designed for handling radioactive materials;

(iv) Research and development directly supporting paragraphs (e)(1)(i), (ii), or (iii) of this subsection and not conducted in a laboratory, or

(v) As designated by the Procurement Executive, or designee. (Classification factor 3.0)

(2) Facility/Task Category B. The main focus of effort performed is related to:

(i) The safeguarding and maintenance of nuclear weapons or nuclear material;

(ii) The manufacture or assembly of nuclear components;

(iii) The physical cleanup, processing, handling, or storage of nuclear radioactive or toxic chemicals, or other substances which pose a significant threat to the environment or the health and safety of workers or the public, if the nature of the work uses state of the art technologies or applications in such operations and/or the inherent difficulty or risk of the work is more demanding than that found in similar industrial/DOE settings (i.e., nuclear energy, chemical or petroleum processing, industrial environmental cleanup);

(iv) The detailed planning necessary for the assembly/disassembly of nuclear weapons/components;

(v) Construction of facilities involving operations requiring a high degree of design layout or process control;

(vi) Research and development directly supporting paragraphs (e)(2)(i), (ii), (iii), (iv) or (v) of this subsection and not conducted in a laboratory; or

(vii) As designated by the Procurement Executive, or designee. (Classification factor 2.5)

(3) Facility/Task Category C. The main focus of effort performed is related to:

(i) The physical cleanup, processing, or storage of nuclear radioactive or toxic chemicals if the nature of the work uses routine technologies in cleanup, processing or storage operations and/or the inherent difficulty or risk of the work is similar to that found in similar industrial/DOE settings (i.e., nuclear energy, chemical processing, industrial environmental cleanup);

(ii) Plant and facility maintenance;

(iii) Plant and facility security (other than the safeguarding of nuclear weapons and material);

(iv) Construction of facilities involving operations requiring normal processes and operations; general or administrative service buildings; or routine infrastructure requirements;

(v) Research and development directly supporting paragraphs (e)(3)(i), (ii), (iii) or (iv) of this subsection and not conducted in a laboratory; or

(vi) As designated by the Procurement Executive, or designee. (Classification factor 2.0)

(4) Facility/Task Category D. The main focus of the effort performed is research and development conducted at a laboratory. (Classification factor 1.25)

(f) Where the Procurement Executive, or designee, has approved a base fee, the Classification Factors shall be reduced, as approved by the Procurement Executive, or designee.

(g) Any risks which are indemnified by the Government (for example, by the Price-Anderson Act) will not be considered as risk to the contractor.

(h) All management and operating contracts awarded on a cost-plus-award-fee basis shall set forth in the contract, or the Performance Evaluation and Measurement Plan(s) required by the contract clause at 48 CFR 970.5204–54, a site specific method of rating the contractor's performance of the contract requirements and a method of fee determination tied to the method of rating.

(i) Prior approval of the Procurement Executive, or designee, is required for an annual total available fee amount exceeding the guidelines in paragraph (c) of this subsection.

(j) DOE Operations/Field Office Managers must ensure that all important areas of contract performance are specified in the contract or Performance Evaluation and Measurement Plan(s), even if such areas are not assigned specific weights or percentages of available fee.

970.15404–4–9 Special considerations: fee limitations.

In situations where the objective performance incentives are of unusual difficulty or where the successful completion of the performance incentives would provide extraordinary value to the Government, fees in excess of those allowed under 48 CFR 970.15404–4–4 and 48 CFR 970.15404–4–8 may be allowed with the approval of the Procurement Executive, or designee. Requests to allow fees in excess of those provided under other provisions of this fee policy must be accompanied by a written justification with detailed supporting rationale as to how the specific circumstances satisfy the two criteria listed in this Subsection.

970.15404–4–10 Documentation.

The contracting officer shall tailor the documentation of the determination of fee prenegotiation objective based on FAR 15.406–1, Prenegotiation objectives, and the determination of the negotiated fee in accordance with FAR 15.406–3, Documenting the negotiation. The contracting officer shall include as part of the documentation: the rationale for the allocation of cost and the assignment of Facility/Task Categories; a discussion of the calculations described in 48 CFR 970.15404–4–4; and discussion of any other relevant provision of this Subsection.

970.15404–4–11 Solicitation provision and contract clauses.

(a) The contracting officer shall insert the clause at 48 CFR 970.5204–54, ''Total Available Fee: Base Fee Amount and Performance Fee Amount,'' in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, that include cost-plus-award-fee arrangements.

(b) The contracting officer shall insert the clause at 48 CFR 970.5204–86, ''Conditional Payment of Fee, Profit, or Incentives,'' in management and operating contracts, and other contracts determined by the Procurement Executive, or designee. Further, due to the various types of fee and incentive arrangements which may be included in a contract and the need to ensure the overall balanced performance of the contract, Alternate I shall be included in such contracts awarded on a cost-plus-award-fee, multiple fee, or incentive fee basis.

(c) The contracting officer shall insert the clause at 48 CFR 970.5204–87, ''Cost Reduction,'' in management and operating contracts, and other contracts determined by the Procurement Executive, or designee, if cost savings programs are contemplated.

(d) The Contracting Officer shall insert the provision at 48 CFR 970.5204–88, ''Limitation on Fee,'' in solicitations for management and operating contracts, and other contracts determined by the Procurement Executive, or designee.

6. Section 970.5204–54 is revised to read as follows:

970.5204–54 Total available fee: base fee amount and performance fee amount.

As prescribed in 48 CFR 970.15404–4–11(a), insert the following clause. The clause should be tailored to reflect the contract's actual inclusion of base fee amount and performance fee amount.

Total Available Fee: Base Fee Amount and Performance Fee Amount (April 1999)

(a) *Total available fee.* Total available fee, consisting of a base fee amount (which may be zero) and a performance fee amount (consisting of an incentive fee component for objective performance requirements, an award fee component for subjective performance requirements, or both) determined in accordance with the provisions of this clause, is available for payment in accordance with the clause of this contract entitled ''Payments and advances.''

(b) *Fee Negotiations.* Prior to the beginning of each fiscal year under this contract, or other appropriate period as mutually agreed upon and, if exceeding one year, approved by the Procurement Executive, or designee, the Contracting Officer and Contractor shall enter into negotiation of the requirements for the year or appropriate period, including the evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. The Contracting Officer shall modify this contract at the conclusion of each negotiation to reflect the negotiated requirements, evaluation areas and individual requirements subject to incentives, the total available fee, and the allocation of fee. In the event the parties fail to agree on the requirements, the evaluation areas and individual requirements subject to incentives, the total available fee, or the allocation of fee, a unilateral determination will be made by the Contracting Officer. The total available fee amount shall be allocated to a twelve month cycle composed of one or more evaluation periods, or such longer period as may be mutually agreed to between the parties and approved by the Procurement Executive, or designee.

(c) *Determination of Total Available Fee Amount Earned.*

(1) The Government shall, at the conclusion of each specified evaluation period, evaluate the contractor's performance of all requirements, including performance based incentives completed during the period, and determine the total available fee amount earned. At the Contracting Officer's discretion, evaluation of incentivized performance may occur at the scheduled completion of specific incentivized requirements.

(2) The DOE Operations/Field Office Manager, or designee, will be (insert title of DOE Operations/Field Office Manager, or designee). The contractor agrees that the determination as to the total available fee earned is a unilateral determination made by the DOE Operations/Field Office Manager, or designee .

(3) The evaluation of contractor performance shall be in accordance with the Performance Evaluation and Measurement Plan(s) described in subparagraph (d) of this clause unless otherwise set forth in the contract. The Contractor shall be promptly advised in writing of the fee determination, and the basis of the fee determination. In the event that the contractor's performance is considered to be less than the level of performance set forth in the Statement of Work, as amended to include the current Work Authorization Directive or similar document, for any contract requirement, it will be considered by the DOE Operations/Field Office Manager, or designee, who may at his/her discretion adjust the fee determination to reflect such performance. Any such adjustment shall be in accordance with the clause entitled ''Conditional Payment of Fee, Profit, or Incentives'' if contained in the contract.

(d) *Performance Evaluation and Measurement Plan(s).* To the extent not set forth elsewhere in the contract:

(1) The Government shall establish a Performance Evaluation and Measurement Plan(s) upon which the determination of the total available fee amount earned shall be based. The Performance Evaluation and Measurement Plan(s) will address all of the requirements of contract performance specified in the contract directly or by reference. A copy of the Performance Evaluation and Measurement Plan(s) shall be provided to the Contractor:

(i) Prior to the start of an evaluation period if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been mutually agreed to by the parties; or

(ii) Not later than thirty days prior to the scheduled start date of the evaluation period, if the requirements, evaluation areas, specific incentives, amount of fee, and allocation of fee to such evaluation areas and specific incentives have been unilaterally established by the Contracting Officer.

(2) The Performance Evaluation and Measurement Plan(s) will set forth the criteria upon which the Contractor will be evaluated relating to any technical, schedule, management, and/or cost objectives selected for evaluation. Such criteria should be objective, but may also include subjective criteria. The Plan(s) shall also set forth the method by which the total available fee amount will be allocated and the amount earned determined.

(3) The Performance Evaluation and Measurement Plan(s) may, consistent with the contract statement of work, be revised during the period of performance. The Contracting Officer shall notify the contractor:

(i) Of such unilateral changes at least ninety calendar days prior to the end of the affected evaluation period and at least thirty calendar days prior to the effective date of the change;

(ii) Of such bilateral changes at least sixty calendar days prior to the end of the affected evaluation period; or

(iii) If such change, whether unilateral or bilateral, is urgent and high priority, at least thirty calendar days prior to the end of the evaluation period.

(e) *Schedule for total available fee amount earned determinations.* The DOE Operations/Field Office Manager, or designee, shall issue the final total available fee amount earned determination in accordance with the schedule set forth in the Performance Evaluation and Measurement Plan(s). However, a determination must be made within sixty calendar days after the receipt by the Contracting Officer of the Contractor's self-assessment, if one is required or permitted by paragraph (f) of this clause, or seventy calendar days after the end of the evaluation period, whichever is later. If the Contracting Officer evaluates the Contractor's performance of specific requirements on their completion, the payment of any earned fee amount must be made within seventy calendar days (or such other time period as mutually agreed to between the Contracting Officer and the Contractor) after such completion. If the determination is delayed beyond that date, the Contractor shall be entitled to interest on the determined total available fee amount earned at the rate established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611) that is in effect on the payment date. This rate is referred to as the ''Renegotiation Board Interest Rate,'' and is published in the **Federal Register** semiannually on or about January 1 and July 1. The interest on any late total available fee amount earned determination will accrue daily and be compounded in 30-day increments inclusive from the first day after the schedule determination date through the actual date the determination is issued. That is, interest accrued at the end of any 30-day period will be added to the determined amount of fee earned and be subject to interest if not paid in the succeeding 30-day period.

Alternate I: When the award fee cycle consists of two or more evaluation periods, add the following as paragraph (c)(4): At the sole discretion of the Government, unearned total available fee amounts may be carried over from one evaluation period to the next, so long as the periods are within the same award fee cycle.

Alternate II: When the award fee cycle consists of one evaluation period, add the following as paragraph (c)(4): Award fee not earned during the evaluation period shall not be allocated to future evaluation periods.

Alternate III: When the DOE Operations/Field Office Manager, or designee, requires the contractor to submit a self-assessment, add the following text as paragraph

(f): Contractor self-assessment. Following each evaluation period, the Contractor shall submit a self-assessment within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the contractor's management during the period.

A self-assessment, in and of itself may not be the only basis for the award fee determination.

Alternate IV: When the DOE Operations/Field Office Manager, or designee, permits the contractor to submit a self-assessment at the contractor's option, add the following text as paragraph (f): *Contractor self-assessment.* Following each evaluation period, the Contractor may submit a self-assessment, provided such assessment is submitted within (*Insert Number*) calendar days after the end of the period. This self-assessment shall address both the strengths and weaknesses of the Contractor's performance during the evaluation period. Where deficiencies in performance are noted, the Contractor shall describe the actions planned or taken to correct such deficiencies and avoid their recurrence. The DOE Operations/Field Office Manager, or designee, will review the Contractor's self-assessment, if submitted, as part of its independent evaluation of the Contractor's management during the period. A self-assessment, in and of itself may not be the only basis for the award fee determination.

7. Subsection 970.5204–86, Conditional Payment of Fee, Profit, or Incentives; 970.5204-87, Cost Reduction; and 970.5204–88, Limitation on Fee, are added to read as follows:

970.5204–86 Conditional payment of fee, profit, or incentives.

As prescribed in 48 CFR 970.15404–4–11(b), insert the following clause:

Conditional Payment of Fee, Profit, Or Incentives (April 1999)

In order for the Contractor to receive all otherwise earned fee, fixed fee, profit, or share of cost savings under the contract in an evaluation period, the Contractor must meet the minimum requirements in paragraphs (a) and (b) of this clause and if Alternate I is applicable (a) through (d) of this clause. If the Contractor does not meet the minimum requirements, the DOE Operations/Field Office Manager or designee may make a unilateral determination to reduce the evaluation period's otherwise earned fee, fixed fee, profit or share of cost savings as described in the following paragraphs of this clause.

(a) *Minimum requirements for Environment, Safety & Health (ES&H) Program.* The Contractor shall develop, obtain DOE approval of, and implement a Safety Management System in accordance with the provisions of the clause entitled, ''Integration of Environment, Safety and Health into Work Planning and Execution,'' if included in the contract, or as otherwise agreed to with the Contracting Officer. The minimal performance requirements of the system will be set forth in the approved Safety Management System, or similar document. If the Contractor fails to obtain approval of the Safety Management System or fails to achieve the minimum performance requirements of the system during the evaluation period, the DOE Operations/Field Office Manager or designee, at his/her sole discretion, may reduce any otherwise earned fees, fixed fee, profit or share of cost savings for the evaluation period by an amount up to the amount earned.

(b) *Minimum requirements for catastrophic event.* If, in the performance of this contract, there is a catastrophic event (such as a fatality, or a serious workplace-related injury or illness to one or more Federal, contractor, or subcontractor employees or the general public, loss of control over classified or special nuclear material, or significant damage to the environment), the DOE Operations/Field Office Manager or designee may reduce any otherwise earned fee for the evaluation period by an amount up to the amount earned. In determining any diminution of fee, fixed fee, profit, or share of cost savings resulting from a catastrophic event, the DOE Operations/Field Office Manager or designee will consider whether willful misconduct and/or negligence contributed to the occurrence and will take into consideration any mitigating circumstances presented by the contractor or other sources.

Alternate I: Add the following paragraphs (c) and (d) in contracts awarded on a cost-plus-award-fee, incentive fee or multiple fee basis:

(c) *Minimum requirements for specified level of performance.*

(1) At a minimum the Contractor must perform the following:

(i) The requirements with specific incentives at the level of performance set forth in the Statement of Work, Work Authorization Directive, or similar document unless an otherwise minimal level of performance has been established in the specific incentive;

(ii) All of the performance requirements directly related to requirements specifically incentivized at a level of performance such that the overall performance of these related requirements is at an acceptable level; and

(iii) All other requirements at a level of performance such that the total performance of the contract is not jeopardized.

(2) The evaluation of the Contractor's achievement of the level of performance shall be unilaterally determined by the Contracting Officer. To the extent that the Contractor fails to achieve the minimum performance levels specified in the Statement of Work, Work Authorization Directive, or similar document, during the evaluation period, the DOE Operations/Field Office Manager, or designee, may reduce any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit, or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

(d) *Minimum requirements for cost performance.*

(1) Requirements incentivized by other than cost incentives must be performed within their specified cost constraint and must not adversely impact the costs of performing unrelated activities.

(2) The performance of requirements with a specific cost incentive must not adversely impact the costs of performing unrelated requirements.

(3) The Contractor's performance within the stipulated cost performance levels for the evaluation period shall be determined by the Contracting Officer. To the extent the Contractor fails to achieve the stipulated cost performance levels, the DOE Operations/Field Office Manager, or designee, at his/her sole discretion, may reduce in whole or in part any otherwise earned fee, fixed fee, profit, or shared net savings for the evaluation period. Such reduction shall not result in the total of earned fee, fixed fee, profit or shared net savings being less than 25% of the total available fee amount. Such 25% shall include base fee, if any.

970.5204–87 Cost reduction.

As prescribed in 48 CFR 970.15404–4–11(c), insert the following clause:

Cost Reduction (April 1999)

(a) *General.* It is the Department of Energy's (DOE's) intent to have its facilities and laboratories operated in an efficient and effective manner. To this end, the Contractor shall assess its operations and identify areas where cost reductions would bring cost efficiency to operations without adversely affecting the level of performance required by the contract. The Contractor, to the maximum extent practical, shall identify areas where cost reductions may be effected, and develop and submit Cost Reduction Proposals (CRPs) to the Contracting Officer. If accepted, the Contractor may share in any shared net savings from accepted CRPs in accordance with paragraph (g) of this clause.

(b) *Definitions.*

Administrative cost is the contractor cost of developing and administering the CRP.

Design, process, or method change is a change to a design, process, or method which has established cost, technical and schedule baseline, is defined, and is subject to a formal control procedure. Such a change must be innovative, initiated by the contractor, and applied to a specific project or program.

Development cost is the Contractor cost of up-front planning, engineering, prototyping, and testing of a design, process, or method.

DOE cost is the Government cost incurred implementing and validating the CRP.

Implementation cost is the Contractor cost of tooling, facilities, documentation, etc., required to effect a design, process, or method change once it has been tested and approved.

Net Savings means a reduction in the total amount (to include all related costs and fee) of performing the effort where the savings revert to DOE control and may be available for deobligation. Such savings may result from a specific cost reduction effort which is negotiated on a cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price basis, or may result directly from a design, process, or method change. They may also be savings resulting from formal or informal direction given by DOE or from changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget.

Shared Net Savings are those net savings which result from:

(1) A specific cost reduction effort which is negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, and is the difference between the negotiated target cost of performing an effort as negotiated and the actual allowable cost of performing that effort or

(2) A design, process, or method change, which occurs in the fiscal year in which the change is accepted and the subsequent fiscal year, and is the difference between the estimated cost of performing an effort as originally planned and the actual allowable cost of performing that same effort utilizing a revised plan intended to reduce costs along with any Contractor development costs, implementation costs, administrative costs, and DOE costs associated with the revised plan. Administrative costs and DOE costs are only included at the discretion of the Contracting Officer. Savings resulting from formal or informal direction given by the DOE or changes in the mission, work scope, or routine reorganization of the Contractor due to changes in the budget are not to be considered as shared net savings for purposes of this clause and do not qualify for incentive sharing.

(c) *Procedure for submission of CRPs.*

(1) CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts or for design, process, or methods changes submitted by the Contractor shall contain, at a minimum, the following:

(i) Current Method (Baseline)—A verifiable description of the current scope of work, cost, and schedule to be impacted by the initiative; and supporting documentation.

(ii) New Method (New Proposed Baseline)—A verifiable description of the new scope of work, cost, and schedule, how the initiative will be accomplished; and supporting documentation.

(iii) Feasibility Assessment—A description and evaluation of the proposed initiative and benefits, risks, and impacts of implementation. This evaluation shall include an assessment of the difference between the current method (baseline) and proposed new method including all related costs.

(2) In addition, CRPs for the establishment of cost-plus-incentive-fee, fixed-price incentive, or firm-fixed-price efforts shall contain, at a minimum, the following:

(i) The proposed contractual arrangement and the justification for its use; and

(ii) A detailed cost/price estimate and supporting rationale. If the approach is proposed on an incentive basis, minimum and maximum cost estimates should be included along with any proposed sharing arrangements.

(d) *Evaluation and Decision.* All CRPs must be submitted to and approved by the Contracting Officer. Included in the information provided by the CRP must be a discussion of the extent the proposed cost reduction effort may:

(1) Pose a risk to the health and safety of workers, the community, or to the environment;

(2) Result in a waiver or deviation from DOE requirements, such as DOE Orders and Joint oversight agreements;

(3) Require a change in other contractual agreements;

(4) Result in significant organizational and personnel impacts;

(5) Create a negative impact on the cost, schedule, or scope of work in another area;

(6) Pose a potential negative impact on the credibility of the Contractor or the DOE; and

(7) Impact successful and timely completion of any of the work in the cost, technical, and schedule baseline.

(e) *Acceptance or Rejection of CRPs.* Acceptance or rejection of a CRP is a unilateral determination made by the Contracting Officer. The Contracting Officer will notify the Contractor that a CRP has been accepted, rejected, or deferred within (Insert Number) days of receipt. The only CRPs that will be considered for acceptance are those which the Contractor can demonstrate, at a minimum, will:

(1) Result in net savings (in the sharing period if a design, process, or method change);

(2) Not reappear as costs in subsequent periods; and

(3) Not result in any impairment of essential functions.

(f) The failure of the Contracting Officer to notify the Contractor of the acceptance, rejection, or deferral of a CRP within the specified time shall not be construed as approval.

(g) *Adjustment to Original Estimated Cost and Fee.* If a CRP is established on a cost-plus-incentive-fee, fixed-price incentive or firm-fixed-price basis, the originally estimated cost and fee for the total effort shall be adjusted to remove the estimated cost and fee amount associated with the CRP effort.

(h) *Sharing Arrangement.* If a CRP is accepted, the Contractor may share in the shared net savings. For a CRP negotiated on a cost-plus-incentive-fee or fixed-price incentive basis, with the specific incentive arrangement (negotiated target costs, target fees, share lines, ceilings, profit, etc.) set forth in the contractual document authorizing the effort, the Contractor's share shall be the actual fee or profit resulting from such an arrangement. For a CRP negotiated as a cost savings incentive resulting from a design, process, or method change, the Contractor's share shall be a percentage, not to exceed 25% of the shared net savings. The specific percentage and sharing period shall be set forth in the contractual document.

(i) *Validation of Shared Net Savings.* The Contracting Officer shall validate actual shared net savings. If actual shared net savings cannot be validated, the contractor will not be entitled to a share of the net shared savings.

(j) *Relationship to Other Incentives.* Only those benefits of an accepted CRP not rewardable under other clauses of this contract shall be rewarded under this clause.

(k) *Subcontracts.* The Contractor may include a clause similar to this clause in any subcontract. In calculating any estimated shared net savings in a CRP under this contract, the Contractor's administration, development, and implementation costs shall include any subcontractor's allowable costs, and any CRP incentive payments to a subcontractor resulting from the acceptance of such CRP. The Contractor may choose any arrangement for subcontractor CRP incentive payments, provided that the payments not reduce the DOE's share of shared net savings.

970.5204–88 Limitation on Fee.

As prescribed in 48 CFR 970.15404–4–11(d), insert the following provision:

Limitation on Fee (April 1999)

For the purpose of this solicitation, fee amounts shall not exceed the total available fee allowed by the fee policy at 48 CFR 970.15404–4 or as specifically stated elsewhere in the solicitation. The Government reserves the unilateral right, in the event an offeror's proposal is selected for award, to limit: fixed fee to not exceed an amount established pursuant to 48 CFR 970.15404–4–4; and total available fee to not exceed an amount established pursuant to 48 CFR 970.15404–4–8; or fixed fee or total available fee to an amount as specifically stated elsewhere in the solicitation.

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FEDERAL REGISTER PAGES AND DATES, MARCH

CFR PARTS AFFECTED DURING MARCH

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REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 11, 1999

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

HUD-owned properties:
- HUD-acquired single family property disposition; published 2-9-99

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:
- Mississippi; published 2-9-99

TRANSPORTATION DEPARTMENT

Air carrier authority applications; procedures and evidence
- Correction; published 3-11-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:
- BMW Rolls-Royce GmbH; published 2-24-99
- Bombardier; published 2-4-99
- Short Brothers; published 2-4-99

UNITED STATES INFORMATION AGENCY

Exchange visitor program:
- Return to home country two-year requirement; waiver requests; processing fee; published 2-9-99

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Hazelnuts grown in—
- Oregon and Washington; comments due by 3-15-99; published 1-14-99

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Livestock and poultry disease and control:
- Pseudorabies in swine; payment of indemnity; comments due by 3-16-99; published 1-15-99

Plant-related quarantine, foreign:
- Unmanufactured wood articles; solid wood packing material; comments due by 3-16-99; published 1-20-99

CONSUMER PRODUCT SAFETY COMMISSION

Poison prevention packaging:
- Child-resistant packaging requirements—
  - Household products containing methacrylic acid; comments due by 3-15-99; published 12-30-98

DEFENSE DEPARTMENT

Acquisition regulations:
- Para-aramid fibers and yarns; comments due by 3-16-99; published 1-15-99
- Taxpayer identification numbers and commercial and government entity codes; comments due by 3-16-99; published 1-15-99

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:
- Ferroalloys production, etc.; comments due by 3-15-99; published 2-12-99

Air pollutants; hazardous; national emission standards:
- Glycol ethers category; redefinition; comments due by 3-15-99; published 1-12-99

Air pollution control; new motor vehicles and engines:
- Compression-ignition marine engines at or above 37 kilowatts; comments due by 3-15-99; published 3-5-99

Air programs:
- State program approvals and delegation of Federal authorities; comments due by 3-15-99; published 1-12-99

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 3-15-99; published 2-11-99
- Illinois; comments due by 3-19-99; published 2-17-99
- New Jersey; comments due by 3-17-99; published 1-22-99

Water pollution; effluent guidelines for point source categories:
- Centralized waste treatment facilities; comments due by 3-15-99; published 1-13-99

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:
- Telecommunications Act of 1996; implementation—
  - Unauthorized changes of consumers' long distance carriers (slamming); subscriber carrier selection changes; comments due by 3-18-99; published 2-16-99

Radio stations; table of assignments:
- New Hampshire; comments due by 3-15-99; published 2-4-99
- New York; comments due by 3-15-99; published 2-4-99
- North Dakota; comments due by 3-15-99; published 2-4-99
- Oklahoma; comments due by 3-15-99; published 2-4-99
- Vermont; comments due by 3-15-99; published 2-4-99

FEDERAL RESERVE SYSTEM

Availability of funds and collection of checks (Regulation CC):
- Nonlocal check availability schedule; maximum time limit on hold shortened; comments due by 3-15-99; published 12-15-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Mortgage and loan insurance programs:
- Single family mortgage insurance—
  - Informed consumer choice disclosure; comments due by 3-18-99; published 2-16-99

INTERIOR DEPARTMENT

Indian Affairs Bureau

Transportation Equity Act for 21st Century; implementation:
- Indian Reservation Roads Negotiated Rulemaking Committee; membership; comments due by 3-15-99; published 2-11-99

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
- Redband trout; comments due by 3-16-99; published 1-6-99

INTERIOR DEPARTMENT

Minerals Management Service

Royalty and offshore management programs; order appeals; comments due by 3-15-99; published 1-12-99

INTERIOR DEPARTMENT

Hearings and Appeals Office, Interior Department

Minerals Management Service; royalty and offshore management programs; order appeals; comments due by 3-15-99; published 1-12-99

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
- Texas; comments due by 3-15-99; published 2-12-99

LABOR DEPARTMENT

Nationwide employment statistics system; election process for State agency representatives for consultations with Labor Department; comments due by 3-18-99; published 12-18-98

NORTHEAST DAIRY COMPACT COMMISSION

Over-order price regulations:
- Milk handlers; administrative assessment; comments due by 3-17-99; published 1-28-99

NUCLEAR REGULATORY COMMISSION

Biproduct material; domestic licensing:
- Industrial devices containing byproduct material; information requirements; comments due by 3-16-99; published 12-2-98

SMALL BUSINESS ADMINISTRATION

Government contracting programs:
- Contract bundling; comments due by 3-15-99; published 1-13-99

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:
- Federal old age, survivors and disability insurance and aged, blind, and disabled—
  - Substantial gainful activity amounts; average monthly earnings

LIST OF PUBLIC LAWS

This is the first in a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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H.R. 433/P.L. 106–1

District of Columbia Management Restoration Act of 1999 (Mar. 5, 1999; 113 Stat. 3)

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